

**BOARD BOOK OF
JUNE 27, 2019**



J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT IN FISCAL YEAR 2018

The Texas Department of Housing and Community Affairs (TDHCA) is the State of Texas' lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals that were served and total funding either administered or pledged for Fiscal Year 2018 (September 1, 2017 through August 31, 2018) – are set out below:

Multifamily New Construction & Rehabilitation:

Provides mechanisms to attract investment capital and to make available significant financing for the construction and rehabilitation of affordable rental housing through the Housing Tax Credit, Multifamily Bond, and Multifamily Direct Loan programs.

Total Households Served: 14,832
Total Funding: \$1,460,067,840

Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed:

Assists with the purchase, construction, repair, or rehabilitation of affordable single family housing by providing grants and loans through the HOME Single Family Development, HOME Homeowner Rehabilitation Assistance, HOME Homebuyer Assistance, Amy Young Barrier Removal, and Texas Bootstrap programs. Stabilizes homeownership in colonias through the HOME Contract for Deed program.

Total Households Served: 257
Total Funding: \$15,545,196

Single Family Homeownership Program:

Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the My First Texas Home and Mortgage Credit Certificates programs.

Total Households Served: 8,018
Total Funding: \$1,279,041,464

Rental Assistance:

Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.

Total Households Served: 1,729
Total Funding: \$10,145,027

Weatherization Assistance Program:

Provides funding to help low-income households control energy costs through the installation of energy efficient materials and through energy conservation education.

Total Households Served: 2,667
Total Funding: \$21,395,454

Homelessness:

Funds local programs and services for individuals and families at risk of homelessness or experiencing homelessness. Primary programs are the Homeless Housing and Services program and the Emergency Solutions Grants program.

Total Individuals Served: 48,886
Total Funding: \$12,811,075

Comprehensive Energy Assistance Program:

Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines.

Total Households Served: 151,141
Total Funding: \$108,351,163

Community Services Block Grant:

Provides administrative support for essential services for low-income individuals through Community Action Agencies.

Total Individuals Served: 385,869
Total Funding: \$37,322,167

Sources: this data comes from the TDHCA 2019 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2018 for 4%, 9%, and Direct Loan Applications. Because Multifamily logs are updated on a monthly basis to reflect the changing status of Applications, this impact statement will also be updated on a monthly basis.

Note: Some households may be served by more than one TDHCA program.



**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING**

**A G E N D A
8:00 AM
JUNE 27, 2019**

**John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

J.B. Goodwin, Chair

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

LEGAL

- a) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Sparrow Assisted Living (HTC 93056 / CMTS 1132)

Jeffrey T. Pender
Deputy General Counsel

OCI/HTF/NSP DIVISION

- b) Presentation, discussion, and possible action authorizing extensions to Neighborhood Stabilization Program 1 contracts and Program Income reservation agreements

Raul Gonzales
Director of
OCI/HTF/NSP

HOME AND HOMELESSNESS PROGRAMS

- c) Presentation, discussion, and possible action on awards for the 2018 HOME Investment Partnerships Program Single Family Programs Homebuyer Assistance and Tenant-Based Rental Assistance Notice of Funding Availability

Abigail Versyp
Director of
HOME and
Homelessness Programs

BOND FINANCE

- d) Presentation, discussion, and possible action on Resolution No. 19-036 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2019 Series A, approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject

Monica Galuski
Director of
Bond Finance

- e) Presentation, discussion, and possible action on Inducement Resolution No. 19-037, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Pecan Grove (#19606) in Seguin
- f) Presentation, discussion, and possible action on Inducement Resolution No. 19-038, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Ventura at Hickory Tree (#19604) in Balch Springs

Teresa Morales
 Manager of
 Multifamily Bonds

MULTIFAMILY FINANCE

- g) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §11.101(a)(2) related to Applicant Disclosure of Undesirable Site Features
 19238 Franklin Trails Franklin
- h) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19420 Pythian Manor, Dallas)
- i) Presentation, discussion, and possible action regarding changes to the capital structure for RBJ Phase I (HTC #18448/NHTF Contract #82700018448)

Marni Holloway
 Director of
 MF Finance

ASSET MANAGEMENT

- j) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application
 15340 Royal Gardens Mineral Wells Mineral Wells
 15407 Reserve at Quebec Fort Worth
- k) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement
 99001 Oakwood Place Apartments Dallas
- l) Presentation, discussion, and possible action regarding a Placed in Service deadline extension for a development located in a Major Disaster Area
 16246 Gala at Four Corners Sugar Land

Rosalio Banuelos
 Director of
 Asset Management

RULES

- m) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, and an order adopting new Subchapter H, Income and Rent Limits, and directing their publication in the *Texas Register*
- n) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.24, Protected Health Information; and an order adopting new 10 TAC §1.24, Information Security and Privacy Requirements; and directing their publication in the *Texas Register*
- o) Presentation, discussion, and possible action on an order adopting an amendment to 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries, and directing publication in the *Texas Register*

Patricia Murphy
 Director of
 Compliance

Brooke Boston
 Director of
 Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, (May-June)
- b) 2020 QAP Planning Project report

Michael Lyttle
 Director of
 External Affairs
Marni Holloway
 Director of
 MF Finance

- c) Report clarifying the number of Direct Loan units for Grim Hotel (Application #19409/#18454)

ACTION ITEMS

ITEM 3: BOARD

Presentation, discussion, and possible action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov't Code §2306.030

J.B. Goodwin
Chair

ITEM 4: AUDIT AND FINANCE COMMITTEE

Report on the meeting of the Internal Audit and Finance Committee

- i. Approval of the updated FY 2020 Operating Budget
- ii. Approval of the FY 2020 Housing Finance Division Budget

Sharon Thomason
Chair of Audit and Finance Committee

ITEM 5: OCI/HTF/NSP DIVISION

Presentation, discussion, and possible action on the 2020-2021 State Housing Trust Fund Biennial Plan

Raul Gonzales
Director of OCI/HTF/NSP

ITEM 6: COMPLIANCE

Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee

Patricia Murphy
Director of Compliance

19094	Laurel Vista	Beaumont
19095	Sagebrush Terrace	Jarrell
19179	Riverwood Commons II	Bastrop
19228	Chaparral Apartments	Midland
19232	The Commons at St Anthony's	Midland
19414	DeWetter Apartments	El Paso
19415	Kathy White Apartments	El Paso
19340	Nuestra Sonora	El Paso
19344	Patriot Place	El Paso

ITEM 7: MULTIFAMILY FINANCE

- a) Report of remanded Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2019 Qualified Allocation Plan for #19315 Hammack Creek Apartments

Marni Holloway
Director of MF Finance

- b) Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application #18269, 2400 Bryan

- c) Presentation, discussion and possible action on timely filed appeals:

19013	Our Lady of Charity Apartments	San Antonio
19126	3104 Division Lofts	Arlington
19158	Pendleton Square	Harlingen
19215	West Ridge Apartments	Pharr
19307	Briarwest Apartments	Houston
19368	Sweetwater Springs	Sweetwater

- d) Presentation, discussion and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors:

19227	Reserve at Risinger	Fort Worth
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e) Presentation, discussion, and possible action on staff recommendations regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features:

19180	St. Elmo Commons	Austin
19185	Edgewood Villas	Killeen

f) Presentation, discussion, and possible action on staff determinations regarding Application disclosures under 10 TAC §§11.101(a)(2) related to Undesirable Site Features; 11.101(a)(3) related to Neighborhood Risk Factors; and 10 TAC §11.10 related to Request for Administrative Deficiency, for #19301 Prince Hall

g) Presentation, discussion, and possible action to issue a list of approved Applications for 2019 Housing Tax Credits in accordance with Tex. Gov't Code §2306.6724(e)

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

J.B. Goodwin
Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CONSENT AGENDA

1a

BOARD ACTION REQUEST

LEGAL DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Sparrow Assisted Living (HTC 93056 / CMTS 1132)

RECOMMENDED ACTION

WHEREAS, Sparrow Assisted Living, owned by Sparrow Adult Living, LLC (Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, all findings that had been referred for an administrative penalty have been resolved informally;

WHEREAS, Owner's representatives have agreed, subject to Board approval, to enter into an Agreed Final Order stipulating that violations occurred and assessing no administrative penalty; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order, assessing no administrative penalty, but stipulating that violations occurred at Sparrow Assisted Living (HTC 93056 / CMTS 1132), as presented at this meeting, but authorizing staff to make any necessary non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Sparrow Adult Living, LLC (Owner) is the owner of Sparrow Assisted Living (Property), a low-income apartment complex composed of 65 units, located in Harris County. Records of the Texas Secretary of State list the following members and/or officers: Dawn Taylor and D. Angela Steed. CMTS lists Dawn Taylor as the primary contact(s) for Owner. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement (LURA) signed in 1996 in consideration for a housing tax credit allocation in the amount of \$52,552 to acquire, rehabilitate and operate the Property. The Owner acquired the property in 2005, and the LURA remains in effect per Section 2 of the LURA, which stipulates that its restrictions run with the land.

Owner was previously referred for an administrative penalty in 2013 for file monitoring violations including failure to provide an acceptable affirmative marketing plan and evidence of outreach marketing, six Annual Eligibility Certification findings, failure to make the project available to the general public, and failure to meet the minimum set-aside. That referral was closed informally when full corrections were received, and no further action was required. Owner has been referred again for the following compliance violations identified during 2018, which have been resolved:

1. Failure to provide complete tenant selection criteria (corrected 2/7/2019);
2. Failure to provide an acceptable affirmative marketing plan and evidence of outreach marketing (corrected 1/23/2019);
3. Failure to make the project available to the general public (corrected 2/7/2019);
4. Noncompliance with lease requirements for unit 20A (corrected 3/21/2019); and
5. Household income violation relating to unit 20A not properly verifying assets (corrected 3/21/2019).

The availability finding above was caused by a change in leasing procedures. The property used to be an SRO serving the homeless population, but TDCHA monitoring staff observed that the owner appeared to be restricting residency to certain illness types, such as schizophrenia, as part of a residential care facility for the mentally handicapped. The availability finding was referred to the Texas Workforce Commission, and resolved by a Conciliation Agreement requiring training and changes to selection criteria. The Enforcement Committee considered the referral on February 26, 2019. At that time, the only unresolved findings related to unit 20A; all other findings had been resolved to the satisfaction of the Compliance Division. The owner stated that Unit 20A was ready for occupancy, but had remained vacant for an extended period due to its undesirable second story location on the property. Given the property's referral history, and the fact that the only remaining findings related to a vacant unit that was ready for occupancy, the Committee voted to recommend an Agreed Final Order assessing no administrative penalty for noncompliance at Sparrow Assisted Living, but stipulating that violations had occurred and were not timely corrected. They requested that the Order be signed after unit 20A was occupied by a qualified household. Unit 20A was occupied by a qualified household on 3/21/2019.

Consistent with direction from the Department's Enforcement Committee, an Agreed Final Order stipulating that violations occurred is recommended, with no administrative penalty. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
SPARROW ADULT LIVING, LLC WITH	§	TEXAS DEPARTMENT OF
RESPECT TO SPARROW ASSISTED LIVING	§	HOUSING AND COMMUNITY
(HTC FILE # 93056 / CMTS # 1132)	§	AFFAIRS
	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 27th day of June 2019, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **SPARROW ADULT LIVING, LLC**, a Texas limited liability company (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

WAIVER

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

FINDINGS OF FACT (FOF)

Jurisdiction:

1. During 1993, Jensen Plaza, LTD. (Prior Owner) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$52,552 to acquire, rehabilitate, and operate Sparrow Assisted Living (Property) (HTC file No. 93056 / CMTS No. 1132 / LDLD No. 448).

2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective August 15, 1996, and filed of record at Document Number S238447 of the Official Public Records of Real Property of Harris County, Texas (Records). In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the Property and binding on all successors and assigns for the full term of the LURA.
3. Respondent purchased the Property in 2005 and, although an Agreement to Comply was not signed, Respondent is bound to the terms of the LURA in accordance with Section 2 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on February 20, 2018, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an August 13, 2018, corrective action deadline was set, however, the following violations were not resolved before that deadline:
 - a. Respondent failed to maintain complete written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. Acceptable evidence of correction was submitted on January 23, 2019, after intervention by the Enforcement Committee.
 - b. Respondent failed to provide a compliant affirmative marketing plan, a violation of 10 TAC §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan that meets minimum requirements and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. Acceptable evidence of correction was submitted on January 23, 2019, after intervention by the Enforcement Committee.
 - c. Respondent failed to make the project available to the general public when it restricted occupancy to applicants with certain illness types, a violation of 10 TAC §10.610 (Written Policies and Procedures), which does not permit admission preferences unless allowed under program rules, and Section 4(c) of the LURA, which requires all units to be made available to income qualified members of the

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

general public. Acceptable evidence of correction was submitted on February 7, 2019, after intervention by the Enforcement Committee.

- d. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 20A, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of all sources of income and assets to ensure qualification for the program. The finding was corrected as of March 21, 2019, when a qualified household occupied the unit. Acceptable evidence of correction was submitted on May 30, 2019, after intervention by the Enforcement Committee.
 - e. Respondent failed to execute required lease provisions or exclude prohibited lease language for unit 20A, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. The finding was corrected as of March 21, 2019, when a qualified household occupied the unit. Acceptable evidence of correction was submitted on May 30, 2019, after intervention by the Enforcement Committee.
6. All violations listed above are considered resolved at the time of this Order.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TAC §10.610 in 2018, by not maintaining written tenant selection criteria meeting TDHCA requirements;
5. Respondent violated 10 TAC §10.617 in 2018, by failing to provide a complete affirmative marketing plan;
6. Respondent violated 10 TAC §10.610 and Section 4 of the LURA in 2018, by failing to make the project available to the general public;

7. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2018, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 20A;
8. Respondent violated 10 TAC §10.613 in 2018, by failing to execute required lease provisions or exclude required lease language for unit 20A;
9. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
10. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
11. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
12. An administrative penalty of \$0 is an appropriate penalty in accordance with 10 TAC Chapter 2.
13. It is appropriate to assess no administrative penalty in accordance with the policies situated at 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent not be assessed an administrative penalty.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 1, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on June 27, 2019.

By: _____
Name: J.B. Goodwin
Title: Chair of the Board of TDHCA

By: _____
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 27th day of June, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 27th day of June, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

Exhibit 1
Texas Administrative Code

TITLE 10 COMMUNITY DEVELOPMENT
PART 1 TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 10 UNIFORM MULTIFAMILY RULES
SUBCHAPTER E POST AWARD AND ASSET MANAGEMENT REQUIREMENTS
RULE §10.406 Ownership Transfers (§2306.6713)

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In

addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

1b

BOARD ACTION REQUEST

OCI, HTF, AND NSP DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action authorizing extensions to Neighborhood Stabilization Program 1 contracts and Program Income reservation agreements.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) entered into Neighborhood Stabilization Program 1 (NSP1) contracts and Neighborhood Stabilization Program 1 Program Income (NSP1-PI) reservation agreements with Administrators which will be expiring on August 31, 2019;

WHEREAS, Administrators have completed initial phases of their programs and are qualifying homebuyers and constructing units in order to convert vacant properties into their final eligible use, and have continued to make progress in bringing more of these land bank parcels into final eligible uses;

WHEREAS, despite this progress, Administrators have also experienced delays in completing their contractual obligations due to eligibility requirements, local market conditions, and capacity;

WHEREAS, the Department would like to authorize extensions of contracts and reservation agreements for specific NSP1 Administrators;

WHEREAS, each NSP1 Administrator is required to have an updated Land Bank plan in place and approved by the Department;

WHEREAS, the Department continues to work closely with Administrators to provide technical assistance towards contract completion and will continue to monitor their progress; and

WHEREAS, some NSP1 contracts and NSP1-PI reservation agreements have exhausted all extensions that staff may authorize, and only the Governing Board may approve additional extensions;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to approve extensions for not more than one additional year to NSP1 contracts and NSP1-PI reservation agreements, conditioned on the Department's approval of updated NSP Land Bank

Plans by each Administrator to enable full, timely, and compliant contract completion and in connection therewith to execute, deliver, and cause to be performed such amendments, documents, and other writings as they or any of them may deem necessary or advisable to effectuate the foregoing; and

FURTHER RESOLVED, that these extensions will be for the following NSP1 contracts and NSP1-PI reservation agreements:

- 77090000101 and 77090003101, Texas State Affordable Housing Corporation
- 77090000106 and 77090003106, City of Irving;
- 77090000108, 77090000204 and 77090003108, Affordable Homes of South Texas, Inc.;
- 77090000150, Community Development Corporation of Brownsville; and
- 77090000154 and 77090003154, City of Port Arthur.

BACKGROUND

The Neighborhood Stabilization Program (NSP) is a U.S. Department of Housing and Urban Development (HUD)-funded program authorized by H.R. 3221, the “Housing and Economic Recovery Act of 2008,” as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop, or acquire and hold, abandoned and foreclosed properties in areas with the greatest need for arresting declining property values resulting from excessive foreclosures.

NSP Administrators continue to progress towards bringing properties to final eligible use. However, several Administrators have experienced difficulties related to fulfilling eligibility requirements, local market conditions (including Hurricane Harvey recovery in Port Arthur), and lack of capacity. Despite this, Administrators have increased the number of annual homebuyer closings each year: 32 in 2016, 37 in 2017, 47 in 2018 and 29 so far in 2019. The Department will continue to provide technical assistance and work closely with all Administrators.

The NSP1 contracts and NSP1-PI reservation agreements for purchase and rehabilitation activities expire on August 31, 2019, and the Administrators require additional time to identify and qualify homebuyers and construct units on vacant lots.

1c

BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on awards for the 2018 HOME Investment Partnerships Program Single Family Programs Homebuyer Assistance and Tenant-Based Rental Assistance Notice of Funding Availability

RECOMMENDED ACTION

WHEREAS, through Board action on November 8, 2018, the Texas Department of Housing and Community Affairs (TDHCA or the Department) made available approximately \$7,796,148 in the 2018 HOME Single Family Programs Homebuyer Assistance (HBA) and Tenant-Based Rental Assistance (TBRA) Notice of Funding Availability (NOFA);

WHEREAS, the NOFA allows awards to be made on an Open Cycle, subject to available funding in the region and subregion in accordance with the Regional Allocation Formula (RAF) on a first-come, first-served basis until March 26, 2019;

WHEREAS, New Braunfels Community Resources (NBCR) applied for two contract awards totaling \$340,000, and has received a review for compliance and program previous participation requirements;

WHEREAS, the Executive Award and Review Advisory Committee (EARAC) recommends the awards; and

WHEREAS, following board approval of the applications presented herein, funding remaining under the NOFA totals \$7,456,148, which has transferred to the HOME Reservation System for use by any entity with an existing Reservation System Participation Agreement (RSPA) in accordance with the NOFA;

NOW, therefore, it is hereby

RESOLVED, that the awards of HOME funding from the 2018 Single Family Programs HBA and TBRA NOFA totaling \$340,000 are hereby approved in the form presented at this meeting, and as may be amended by the Board.

BACKGROUND

On September 12, 2018, the Department received the U. S. Department of Housing and Urban Development's (HUD) State of Texas 2018 allocation for the HOME Program for approximately \$34,986,241. TDHCA has programmed the funds for various uses in accordance with the HUD-approved 2018 Consolidated Plan One-Year Action Plan (OYAP). The Board approved at the meeting of November 8, 2018, to release the 2018 HOME Single Family Programs Homebuyer Assistance (HBA) and Tenant-Based Rental Assistance (TBRA) NOFA that includes \$7,796,148 of the 2018 HOME allocation for contracts for HBA and TBRA under the general set-aside. These set-aside funds are considered for award on a first-come, first-served basis to eligible applicants subject to the Regional Allocation Formula; unrequested funds are subsequently transferred to the HOME Reservation System. Funds transferred to the Reservation System are available for use by any current administrator of a HOME RSPA.

NBCR submitted two applications under the NOFA. One provides TBRA in the rural areas of Comal and Guadalupe counties and one provides TBRA in the urban areas of Comal and Guadalupe counties. Staff reviewed both applications reviewed and has determined them to be eligible for consideration for award. TBRA provides eligible households rental subsidies, including security and utility deposits to tenants earning 80% of less of the AMFI, as defined by HUD, for up to 24 months. Tenants must also participate in a self-sufficiency program. Although self-sufficiency is not a requirement within the federal regulations, the Department does require all TBRA program participants to participate in a self-sufficiency plan as a condition of rental assistance. The self-sufficiency plan facilitates the assisted family's transition from temporary rental assistance to permanent housing, since TBRA assistance under a contract may not exceed 24 months. Self-sufficiency plans are customized to the populations being served and range in design. At a minimum, specific goals relating to paying for housing, either through permanent assistance programs or earned income must be included in the plan.

The application acceptance period for awards began January 22, 2019, and ended May 28, 2019. Funds in an amount not to exceed \$350,000 in project funds per application may be awarded under this NOFA for provision of TBRA. Applicants may apply for more than one award under the NOFA, with a maximum of two contracts per program activity type. Applicants requesting more than one award were required to submit a separate application for each request, and the service areas for each award per program activity must be mutually exclusive.

Staff recommends that NBCR receive two awards to administer TBRA activities, totaling \$340,000 in project funds. The balance of HOME funds available exclusively for TBRA and HBA activities though the HOME Reservation System until July 30, 2019.

1d

BOARD ACTION REQUEST

BOND FINANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on Resolution No. 19-036 authorizing the issuance, sale and delivery of Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds, 2019 Series A, approving the form and substance of related documents, authorizing the execution of documents and instruments necessary or convenient to carry out the purposes of this resolution, and containing other provisions relating to the subject

RECOMMENDED ACTION

Adopt attached resolution.

BACKGROUND

At the Board meeting of May 23, 2019, the Board granted approval to begin the process of issuing single family mortgage revenue bonds (SFMRBs) for origination of mortgage loans to low, very low, and moderate income homebuyers. Based on current market conditions, staff is seeking approval for the issuance of Texas Department of Housing and Community Affairs, Single Family Mortgage Revenue Bonds, 2019 Series A (the Bonds).

Bonds

The Bonds will be fixed rate, tax-exempt bonds. Total proceeds (par amount plus premium) will not exceed \$175 million, and will be used to purchase Ginnie Mae mortgage-backed securities (MBS) backed by tax-exempt eligible mortgage loans, to pay a portion of the costs of issuance related to the Bonds, and to finance a portion of the down payment assistance, lender compensation, and second loan servicing fees related to the underlying mortgage loans. The bonds are expected to be offered as traditional SFMRBs, with serial bonds, term bonds, and Planned Amortization Class (PAC) bonds. The PAC bonds and a portion of the term bonds are expected to be issued at a premium. Bond proceeds are expected to be invested in a Guaranteed Investment Contract (GIC) until expended. MBS can be purchased with Bond proceeds until August 1, 2020, and the unexpended proceeds redemption is scheduled for September 1, 2020. The Department currently purchases approximately \$54 million per month in tax-exempt bond eligible loans. As such, bond proceeds are expected to be fully utilized well in advance of the unexpended proceeds redemption.

Underwriters

J.P. Morgan will serve as the senior manager for the Bonds, with Jefferies LLC, Piper Jaffray & Co., Ramirez & Co., and RBC Capital Markets serving as co-managers.

Transaction Timing

The Bonds are expected to price July 24 and to close August 29. This schedule may be adjusted in response to changing market conditions.

Mortgage Loans

Borrower options for loans originated with the proceeds of the bonds are expected to include a low mortgage rate option for up to 25% of the proceeds; borrowers choosing this option do not receive down payment or closing cost assistance. The remaining proceeds will be used for mortgage loans that provide four points of down payment and closing cost assistance in the form of a 0%, non-amortizing, 30-year second loan that is due on sale or refinance, with a first mortgage at a higher rate than the low mortgage rate option.

Department Contribution

The contribution by the Department will not exceed \$10 million, which will be used to fund down payment and closing cost assistance, to pay costs related to the acquisition of qualifying mortgage loans including the payment of lender compensation and servicing fees for second mortgage loans, and to pay all or a portion of the costs of issuance of the Bonds. The contribution will be funded from amounts on deposit in the SFMRB indenture and from other available single family funds. Capitalized interest of up to \$4 million may be paid from the SFMRB indenture as necessary.

Exhibits

The Exhibits for Resolution 19-036 can be found online at the Department's Board Meeting Information Center website: <http://www.tdhca.state.tx.us/board/meetings.htm>.

RESOLUTION NO. 19-036

RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS SINGLE FAMILY MORTGAGE REVENUE BONDS, 2019 SERIES A; APPROVING THE FORM AND SUBSTANCE OF RELATED DOCUMENTS; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to issue revenue bonds, to provide money to (i) make and acquire mortgage loans or participations therein, (ii) fund or increase the Department's reserves or funds (iii) pay the costs and expenses of issuing the bonds and (iv) pay interest on the bonds; and (b) to pledge all or part of the revenues, income or resources of the Department, including the revenues to be received by the Department from the mortgage loans or participations therein, to secure the payment of the principal, interest or redemption premium on the bonds; and

WHEREAS, the Department and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), have executed and delivered that certain Amended and Restated Single Family Mortgage Revenue Bond Trust Indenture dated as of June 1, 2017, (together with supplemental indentures hereto numbered Sixty-Third through Sixty-Sixth, collectively) as amended and supplemented from time to time (the "Single Family Indenture"); and

WHEREAS, the Department has a single family mortgage purchase program (the "Program") to fund all or a portion of the Department's single family loan production; and

WHEREAS, pursuant to Resolution No. 17-003, the Board approved Program Guidelines setting forth the general terms of the mortgage loans to be originated under the Program (the "Mortgage Loans") and authorized execution and delivery of (i) a Mortgage Acquisition, Pooling and Servicing Agreement setting forth the terms under which Idaho Housing and Finance Association (the "Servicer"), will review, acquire, package and service the Mortgage Loans, and (ii) a Master Mortgage Origination Agreement in connection with the acceptance of new lenders in the Program; and

WHEREAS, Section 302 of the Single Family Indenture authorizes the issuance of additional Bonds for the purposes of acquiring Mortgage Loans or participations therein,

payment of costs of issuance, funding of reserves, payments of certain Department expenses and refunding bonds; and

WHEREAS, the Board has determined to authorize the issuance of the Department's Single Family Mortgage Revenue Bonds, to be known as its Single Family Mortgage Revenue Bonds, 2019 Series A (the "Bonds") pursuant to the Single Family Indenture for the purpose of providing funds to make and acquire qualifying mortgage loans through the purchase of mortgage backed securities ("Mortgage Certificates"), to provide down payment and closing cost assistance and to pay a portion of the costs of issuance; and

WHEREAS, the Board desires to authorize the execution and delivery of the Sixty-Seventh Supplemental Single Family Mortgage Revenue Bond Trust Indenture (the "Supplemental Indenture") in substantially the form attached hereto relating to the Bonds; and

WHEREAS, the Board has further determined that the Department should enter into a Bond Purchase Agreement relating to the sale of the Bonds (the "Bond Purchase Agreement") with J.P. Morgan Securities LLC., as representative of the group of underwriters listed in the Bond Purchase Agreement (the "Underwriters"), in substantially the form attached hereto setting forth certain terms and conditions upon which the Underwriters will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriters; and

WHEREAS, the Board has determined to authorize the execution and delivery of a 2019 A Supplement to Depository Agreement relating to the Bonds (the "Depository Agreement"), by and among the Department, the Trustee and the Texas Treasury Safekeeping Trust Company, in substantially the form attached hereto to provide for the holding, administering and investing of certain moneys and securities relating to the Bonds; and

WHEREAS, the Board has been presented with a draft of a preliminary official statement to be used in the public offering of the Bonds (the "Official Statement") and the Board desires to approve such Official Statement in substantially the form attached hereto; and

WHEREAS, the Board desires to authorize the execution and delivery of a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") in substantially the form attached hereto between the Department and the Trustee; and

WHEREAS, the Board has determined to authorize the investment of a portion of the proceeds of the Bonds and any other amounts held under the Single Family Indenture with respect to the Bonds in one or more guaranteed investment contracts (the "GICs") on or after the closing date or such other investments as the authorized representatives named herein may approve; and

WHEREAS, the Board desires to approve the use of an amount not to exceed \$10,000,000 of Department funds for any purpose authorized under the Act and the Single Family Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying

mortgage loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay a portion of the costs of issuance; and

WHEREAS, the Board desires to authorize the use of an amount not to exceed \$4,000,000 of funds on deposit under the Single Family Indenture to fund capitalized interest; and

WHEREAS, Chapter 1371, Texas Government Code, as amended ("Chapter 1371"), authorizes the Department to take other actions described in this Resolution related to issuance of the Bonds; and

WHEREAS, the Board desires to approve the forms of the Supplemental Indenture, the Bond Purchase Agreement, the Depository Agreement, the Official Statement and the Continuing Disclosure Agreement in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to further its programs in accordance with such documents by authorizing the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1
ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Bonds. That the issuance of any or all of the Bonds in one or more series or subseries and on a taxable or tax-exempt basis is hereby authorized, all under and in accordance with the Single Family Indenture, and that, upon execution and delivery of the Supplemental Indenture, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Bonds and to deliver the Bonds to the Attorney General of Texas (the "Attorney General") for approval, the Comptroller of Public Accounts of the State of Texas (the "Comptroller") for registration and the Trustee for authentication, and thereafter to deliver the Bonds to or upon the order of the Underwriters.

Section 1.2 Authority to Approve Form of Documents, Determine Interest Rates, Principal Amounts, Maturities and Prices. That the Authorized Representatives of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, as amended, to fix and determine the interest rates, principal amounts and maturities of, and the prices at which the Department will sell the Bonds to the Underwriters, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative of the Bond Purchase Agreement; provided, however, that: (a) the interest rate on the Bonds shall not exceed 6.00% per annum; (b) the aggregate principal amount of the Bonds shall not exceed \$175,000,000; (c) the final maturity of the Bonds shall occur not later than September 1, 2051; (d) the price at which the Bonds are sold to the Underwriters shall not exceed 108% of the aggregate principal amount thereof; and (e) the Bonds shall be rated by

a nationally recognized rating agency for municipal securities in one of the four highest rating categories for a long-term debt instrument. In no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law.

Section 1.3 Approval, Execution and Delivery of the Supplemental Indenture. That the form and substance of the Supplemental Indenture are hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to Supplemental Indenture, and to deliver the Supplemental Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriters pursuant to the Bond Purchase Agreement is hereby approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Underwriters.

Section 1.5 Official Statement. That the Official Statement relating to the Bonds, in substantially the form presented to the Board, is hereby approved; that prior to the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, are hereby authorized and directed to finalize the Official Statement for distribution by the Underwriters to prospective purchasers of the Bonds, with such changes therein as the Authorized Representatives may approve in order to permit such an Authorized Representative, for and on behalf of the Board, to deem the Official Statement relating to the Bonds final as of its date, except for such omissions as are permitted by Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), such approval to be conclusively evidenced by the distribution of such Official Statement; and that within seven business days after the execution of the Bond Purchase Agreement, the Authorized Representatives, acting for and on behalf of the Board, shall cause the final Official Statement, in substantially the form of the Official Statement attached hereto, with such changes as such an Authorized Representative may approve, such approval to be conclusively evidenced by such Authorized Representative's execution thereof, to be provided to the Underwriters in compliance with Rule 15c2-12.

Section 1.6 Approval of Depository Agreement. That the form and substance of the Depository Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Depository Agreement and to deliver the Depository Agreement to the Trustee and to the Texas Treasury Safekeeping Trust Company.

Section 1.7 Approval of Continuing Disclosure Agreement. That the form and substance of the Continuing Disclosure Agreement are hereby authorized and approved and that the Authorized Representatives are hereby authorized to execute, attest and affix the Department's seal to the Continuing Disclosure Agreement and to deliver the Continuing Disclosure Agreement to the Trustee.

Section 1.8 Approval of GIC Broker; Approval of Investment in GICs. That the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer of the Department is hereby authorized to select a GIC Broker, if any, and that the investment of funds held under the Single Family Indenture in connection with the Bonds in GICs is hereby approved and that the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer of the Department is hereby authorized to complete arrangements for the investment in GICs or such other investments as the Authorized Representatives may approve.

Section 1.9 Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the Single Family Indenture, the Supplemental Indenture, the Bond Purchase Agreement, the Depository Agreement and the Continuing Disclosure Agreement.

Section 1.10 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, or in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.11 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A – Supplemental Indenture
- Exhibit B – Bond Purchase Agreement
- Exhibit C – Official Statement
- Exhibit D – Depository Agreement
- Exhibit E – Continuing Disclosure Agreement

Section 1.12 Authorized Representatives. The following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, and the Secretary or Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any

one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.13 Department Contribution. That the contribution of Department funds in an amount not to exceed \$10,000,000 to be used for any purpose authorized under the Act and the Single Family Indenture, including to provide down payment and closing cost assistance, to make and acquire qualifying mortgage loans, including payment of lender compensation, through the purchase of Mortgage Certificates and to pay a portion of the costs of issuance is hereby authorized.

Section 1.14 Use of Single Family Indenture Funds and Other Funds. That the use of an amount not to exceed \$4,000,000 of funds on deposit under the Single Family Indenture to fund capitalized interest is hereby authorized.

ARTICLE 2

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Submission to the Attorney General of Texas. That the Board hereby approves the submission by the Department's Bond Counsel to the Attorney General of Texas, for his approval, of a transcript of the legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.2 Engagement of Other Professionals. That the Executive Director, the Acting Director or the Director of Bond Finance and Chief Investment Officer is authorized to engage an accounting firm to perform such functions, audits, yield calculations, verifications and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of the purchasers of the Bonds and Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.3 Certification of the Minutes and Records. That the Secretary and any Assistant Secretary to the Board are hereby authorized to certify and authenticate minutes and other records on behalf of the Department for its single family mortgage revenue bond program, the issuance of the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agencies. That the Executive Director, the Acting Director, the Director of Bond Finance and Chief Investment Officer and the Department's consultants are authorized to seek ratings from Moody's Investors Service, Inc. and S&P Global Ratings, a division of Standard & Poor's Financial Services LLC.

Section 2.5 Ratifying Other Actions. That all other actions taken or to be taken by the Executive Director, the Acting Director and the Department's staff in connection with the issuance of the Bonds are hereby ratified and confirmed.

Section 2.6 Authorized to Invest Funds. That pursuant to Section 1371.102 and the Act, the Executive Director, the Acting Director or the Director of Bond Finance and Chief

Investment Officer is hereby authorized to undertake all appropriate actions required under the Single Family Indenture and the Depository Agreement and to provide for investment and reinvestment of all funds held under the Single Family Indenture in accordance with the Single Family Indenture.

**ARTICLE 3
CERTAIN FINDINGS AND DETERMINATIONS**

Section 3.1 Purpose of Bonds. That the Board hereby determines that the purpose for which the Department may issue the Bonds constitutes “public works” as contemplated by Chapter 1371, Texas Government Code, as amended.

**ARTICLE 4
GENERAL PROVISIONS**

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate pledged under the Single Family Indenture to secure payment of the bonds issued under the Single Family Indenture and payment of the Department’s costs and expenses for its single family mortgage revenue bond program thereunder and under the Single Family Indenture, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State.

Section 4.3 Purposes of Resolution. That the Board has expressly determined and hereby confirms that the issuance of the Bonds and the furtherance of the purposes contemplated by this Resolution accomplish a valid public purpose of the Department by providing for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State.

Section 4.4 Notice of Meeting. That this Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 4.5 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 27th day of June, 2019.

Chair, Governing Board

ATTEST:

Secretary to the Board

(SEAL)

EXHIBITS

ALL DOCUMENTS REFERRED TO IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL COPY OF SAID RESOLUTION, WHICH IS ON FILE IN THE OFFICIAL RECORDS OF THE DEPARTMENT, AND EXECUTED COUNTERPARTS OF SUCH EXHIBITS ARE INCLUDED IN THE OFFICIAL TRANSCRIPT OF PROCEEDINGS RELATING TO THE BONDS.

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on Inducement Resolution No. 19-037, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Pecan Grove (#19606) in Seguin

RECOMMENDED ACTION

WHEREAS, a bond pre-application for Pecan Grove, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

WHEREAS, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

WHEREAS, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development;

NOW, therefore, it is hereby

RESOLVED, that based on the foregoing, Inducement Resolution No. 19-037 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for Pecan Grove, is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the state's annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to site eligibility and threshold as well as previous participation as it relates to previously funded developments through the Department. During the review of the full application, staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will then be

presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$26 million in private activity bond volume cap.

Pecan Grove is to be located at 1231 West Court Street in Seguin, Guadalupe County, and proposes the new construction of 198 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income. The Department has not received any letters of support or opposition for this development.

RESOLUTION NO. 19-037

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENTS; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental developments (the “Developments”) more fully described in Exhibit A attached hereto. The ownership of the Developments as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the “Owners”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Developments and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Developments from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will

satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Developments listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Developments described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Developments one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Developments on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Developments in an aggregate principal amount not to exceed those amounts, corresponding to the Developments, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public

policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto (“Costs of the Developments”) from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Developments will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Developments, which Developments will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Developments. The Costs of the Developments may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Developments. Without limiting the generality of the foregoing, the Costs of the Developments shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Developments, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Developments, the placing of the Developments in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department ("Bond Counsel"), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Developments' necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further

authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Developments may be undertaken by any company or partnership that is a “related person” to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department’s official intent for expenditures on Costs of the Developments which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Developments may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Developments and Owners. The Board finds that:

(a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;

- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit; and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Developments will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 27th day of June, 2019.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Pecan Grove	LDG Pecan Grove, LP a Texas limited partnership	LDG Pecan Grove GP, LLC, General Partner, a Texas limited liability company	\$26,000,000
Costs: Acquisition/construction of a 198-unit affordable, multifamily housing development to be known as Pecan Grove, to be located at 1231 West Court Street, Seguin, Guadalupe County, Texas 78155.			

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on Inducement Resolution No. 19-038, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Ventura at Hickory Tree (#19604) in Balch Springs

RECOMMENDED ACTION

WHEREAS, the Board previously adopted the bond inducement resolution for Ventura at Hickory Tree at the meeting of February 21, 2019;

WHEREAS, the original inducement resolution reflected a maximum amount of \$27,000,000;

WHEREAS, as a result of additional due diligence relating to the financial structure of the transaction staff seeks to modify the bond amount to \$30,000,000 at the request of the applicant; and

WHEREAS, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development for the higher bond amount;

NOW, therefore, it is hereby

RESOLVED, that based on the foregoing, Inducement Resolution No. 19-038 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for Ventura at Hickory Tree, is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds, and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to site eligibility and threshold, as well as previous

participation as it relates to developments previously funded through the Department. During the review of the full application, staff will underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$30 million in private activity bond volume cap.

This development is located at 3401 Hickory Tree Road in Balch Springs, Dallas County, and proposes the new construction of 216 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income. The Department has not received any letters of support or opposition for this development. As was noted in the original Board Action Request, the pre-application disclosed the presence of a Neighborhood Risk Factor; specifically, that the elementary school in the attendance zone of the proposed development site did not achieve the Met Standard rating based on the 2018 TEA Accountability Ratings. The school achieved the desired Met Standard rating in 2017 and 2016. There was no mitigation submitted with the pre-application for staff to evaluate and therefore, a recommendation of eligibility will be made at the time the full application is submitted to the Department.

RESOLUTION NO. 19-038

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the "Act") for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental development (the "Development") more fully described in Exhibit A attached hereto. The ownership of the Development as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the "Owners") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owners have made payments with respect to the Development and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Development from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Development will

satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Development listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Development described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Development one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") approved Resolution No. 19-028 on February 21, 2018 (the "Original Resolution") declaring its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Development described on the exhibit to the Original Resolution on the terms and conditions set forth therein, and the Board has determined to amend the Original Resolution only with respect to the Owners and Development described on Exhibit A attached hereto in order to amend the not to exceed principal amount for the Development listed on Exhibit A hereto; NOW, THEREFORE,

BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the

Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General"); (v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date of the Original Resolution in connection with the acquisition of real property and construction or rehabilitation of its Development and listed on Exhibit A attached hereto ("Costs of the Development") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date of the Original Resolution in connection with the acquisition and construction or rehabilitation of the Development; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Development will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Development, which Development will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on the Original Resolution or this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department ("Bond Counsel"), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross

income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development's necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Development may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. The Original Resolution and this Resolution constitute the Department's official intent for expenditures on Costs of the Development which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Development may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Development and Owners. The Board finds that:

- (a) the Development is necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Development is a public purpose and will provide a public benefit; and
- (e) the Development will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Development will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 27th day of June, 2019.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

June 27, 2019 Supplement to February 21, 2019 Inducement Resolution – Ventura at Hickory Tree

#5947454.3

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Ventura at Hickory Tree	Balch Springs Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership	General Partner: Balch Springs Leased Housing Associates GP I, LLC, a Minnesota limited liability company	\$30,000,000
Costs: Acquisition/construction of a 216-unit affordable, multifamily housing development to be known as Ventura at Hickory Tree, to be located at 3401 Hickory Tree Road, Balch Springs, Dallas County, Texas 75180			

1g

BACKGROUND

10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan relates to Undesirable Site Features. Pursuant to the rule, such disclosures are required if the Development Site is within the applicable distance of any of the identified undesirable features.

The Department's Governing Board has final decision making authority in making an affirmative determination or finding the site ineligible. Pursuant to 10 TAC §11.101(a)(2), should the Board make the determination that a Development Site is ineligible based on this report, the termination of the Application resulting from such Board action is final and not subject to further appeal.

Per 10 TAC §11.101(a)(2), Development Sites within the applicable distance of any of the undesirable features identified in the rule will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility.

Summary of Disclosure: Development Site is located approximately 400 feet from a railroad track.

Mitigation Efforts: Applicant has certified that they have engaged a qualified Third Party to perform a noise assessment and that the proposed Development will incorporate any necessary sound mitigation according to HUD standards, as if these HUD standards applied directly to the Development. This proposed mitigation meets the requirement of 10 TAC 11.101(a)(2)(E)(ii) of the QAP.

Staff Determination: Staff is recommending that the Board find the Development Site eligible.

19238

Franklin Trails

Development Owner Certification, Acknowledgement and Consent

All defined terms used in this certification and not specifically defined herein have the meanings ascribed to them in Chapter 2306 of the Tex. Gov't Code, §42 of the Internal Revenue Code, and § 11.1(d) of the Qualified Allocation Plan.

The undersigned, in each and all of the following capacities in which it may serve or exist -- Applicant, Development Owner, Developer, Guarantor of any obligation of the Applicant, and/or Principal of the Applicant and hereafter referred to as "Applicant" or "Development Owner," whether serving in one or more such capacities, is hereby submitting its Application to the Department for consideration of Department funding.

Applicant hereby represents, warrants, acknowledges and certifies to the Department and to the State of Texas that:

The Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or, if no local building codes are in place, then to the most recent version of the International Building Code.

This Application and all materials submitted to the Department constitute records of the Department subject to Tex. Gov't Code, Chapter 552. All persons who have a property interest in the Application, along with all plans and third-party reports, acknowledge that the Department may publish them on the Department's website, release them in response to a request for public information, and make other use of the information as authorized by law. This includes all Third Party reports, which will be posted in their entirety on the Department's website, as they constitute a part of the Application. The Application is in compliance with all requirements related to the eligibility of an Applicant, Application and Development as further defined in 10 TAC §§11.101 and 11.202 of the Qualified Allocation Plan. Any issues of non-compliance have been disclosed.

All representations, undertakings and commitments made by Applicant in the Application process for Development assistance expressly constitute conditions to any Commitment, Determination Notice, Carryover Allocation, or Direct Loan Commitment for such Development which the Department may issue or award, and the violation of any such condition shall be sufficient cause for the cancellation and rescission of such Commitment, Determination Notice, Carryover Allocation, or Direct Loan Award Letter, Commitment or Contract by the Department. To the extent allowed under Tex. Gov't Code §2306.6720, if any such representations,

undertakings and commitments concern or relate to the ongoing features or operation of the Development, they shall each and all be enforceable even if not reflected in the Land Use Restriction Agreement. All such representations, undertakings and commitments are also enforceable by the Department and the residents of the Development, including enforcement by administrative penalties for failure to perform, in accordance with the Land Use Restriction Agreement.

When providing a Pre-Application, Application or other materials to a state representative, local governmental body, Neighborhood Organization, or anyone else to secure support or approval that may affect the Applicant's competitive posture, an Applicant must disclose in accordance with the Department's rules those aspects of the Development that may not have been determined or selected or may be subject to change, such as changes in the amenities ultimately selected and provided.

The Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.), the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.), Fair Housing Accessibility, the Texas Fair Housing Act; and the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

The Development Owner has read and understands the Department's fair housing educational materials posted on the Department's website as of the beginning of the Application Acceptance Period.

All Applications proposing Rehabilitation (including Reconstruction) will be treated as substantial alteration, in accordance with 10 TAC Chapter 1, Subchapter B.

The Development Owner will establish a reserve account consistent with Tex. Gov't Code §2306.186, and as further described in §11.302(d)(2)(I) of the Qualified Allocation Plan, relating to Replacement Reserve Account requirements.

The Development will operate in accordance with the applicable compliance monitoring requirements found in Chapter 10, Subchapter F.

The Development Owner agrees to implement a plan to use Historically Underutilized Businesses (HUB) in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas. The Development Owner will be

required to submit a report of the success of the plan as part of the cost certification documentation, in order to receive IRS Forms 8609 or, if the Development does not have Housing Tax Credits, release of retainage.

The Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as further described in Tex. Gov't Code §2306.6734.

The Development Owner will specifically market to veterans through direct marketing or contracts with veteran's organizations. The Development Owner will be required to identify how they will specifically market to veterans and report to the Department in the annual housing report on the results of the marketing efforts to veterans. Exceptions to this requirement must be approved by the Department.

Accessibility Requirements

The Development Owner understands that in accordance with Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8, if the Development includes the New Construction or substantial rehabilitation of multifamily units (4 or more units per building), at least five percent (5%) of all dwelling units will be designed and built to be accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise compliant with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" (Federal Register 79 FR 29671) meets this requirement. In addition, at least two percent (2%) of all dwelling units will be designed and built to be accessible for persons with hearing or vision impairments.

The Development Owner understands that regardless of building type, all Units accessed by the ground floor or by elevator ("affected units") must meet the requirements at 10 TAC §11.101(b)(8)(B).

The Development Owner certifies that all accessible Units under 10 TAC Chapter 1, Subchapter B, will be dispersed throughout the Development.

The Development Owner certifies that representations made in the Architect Certification are true and correct, and understands that the Department evaluation of architectural drawings may not include an assessment of accessibility. The Development Owner is responsible for any modifications necessary to meet accessibility requirements identified at the final construction inspection.

Unused Credit or Penalty Fee *(select one box as applicable)*

The Applicant returned a full credit allocation after the Carryover Allocation deadline required for that allocation and is subject to the Unused Credit or Penalty Fee pursuant to §11.901(16) of the Qualified Allocation Plan.

The Applicant certifies that no disclosure regarding §11.901(16) of the Qualified Allocation Plan is necessary.

Termination of Relationship in an Affordable Housing Transaction *(select one box as applicable)*

The Applicant has disclosed, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction that has terminated, voluntarily or involuntarily, within the past 10 years or plans to or is negotiating to terminate their relationship with any other affordable housing development. The disclosure identified the person or persons and development involved, the identity of each other development and contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the termination or proposed termination, and any appropriate supporting documents. The Applicant has read and understands §11.202(1)(M) of the Qualified Allocation Plan related to such disclosure.

The Applicant certifies that no disclosure regarding §11.202(1)(M) of the Qualified Allocation Plan is necessary.

Voluntary Compliance Agreement with any Governmental Agency *(select one box as applicable)*

The Applicant has disclosed, in the Application, any Principal or any entity or Person in the Development ownership structure who was or is involved as a Principal in any other affordable housing transaction that entered into a voluntary compliance agreement (or similar agreement) with any governmental agency that is the result of negotiation regarding noncompliance of any affordable housing Development with any requirements. The disclosure identified the person or persons and development involved, the identity of each other development, contact information for the other Principals of each such development, a narrative description of the facts and circumstances of the agreement or proposed agreement, and any appropriate supporting documents. The Applicant has read and understands §11.202(1)(N) of the Qualified Allocation Plan related to such disclosure.

The Applicant certifies that no disclosure regarding §11.202(1)(N) of the Qualified Allocation Plan is necessary.

The Applicant certifies that, for any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, the Development Site will be developed in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. The Applicant certifies that, floodplain maps will be used and the Development Site will comply with regulations as they exist at the time of commencement of construction. Applicant further certifies that, for any Development proposing Rehabilitation (excluding Reconstruction) that is not a HUD or TRDO-USDA assisted property, the Development Site is not located in the one-hundred year floodplain unless the existing structures already meet the requirements for New Construction or Reconstruction, as certified to by a Third Party engineer, or unless the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application.

Undesirable Site Features (select one of the boxes as applicable)

* The Development **is not** located in an area with undesirable site features as further described in §11.101(a)(2) of the Qualified Allocation Plan.

*Site is located within 400 ft of RR track: however Applicant will perform noise assessment and sound mitigation as required by 11.101(a)(2)(E)(ii)

The proposed Development is Rehabilitation (excluding Reconstruction) with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") and an exemption was requested prior to the filing of an Application or is being requested with the Application in accordance with §11.101(a)(2) of the Qualified Allocation Plan.

The proposed Development is Historic Preservation pursuant to §11.9(e)(6) of the Qualified Allocation Plan, is located in an area with an undesirable site feature and an exemption was requested prior to the filing of an Application or is being requested with the Application.

The proposed Development is New Construction, is located in an area with an undesirable site feature and a copy of the local ordinance that regulates the proximity of such feature to a multifamily development is included in the Application.

The proposed Development **is** located in an area with an undesirable site feature and mitigation to be considered by staff and the Board is included in the Application.

The Applicant certifies that no disclosure regarding §11.202(1)(N) of the Qualified Allocation Plan is necessary.

The Applicant certifies that, for any Development proposing New Construction or Reconstruction and located within the one-hundred (100) year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, the Development Site will be developed in full compliance with the National Flood Protection Act and all applicable federal and state statutory and regulatory requirements so that all finished ground floor elevations are at least one foot above the floodplain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. The Applicant certifies that, floodplain maps will be used and the Development Site will comply with regulations as they exist at the time of commencement of construction. Applicant further certifies that, for any Development proposing Rehabilitation (excluding Reconstruction) that is not a HUD or TRDO-USDA assisted property, the Development Site is not located in the one-hundred year floodplain unless the existing structures already meet the requirements for New Construction or Reconstruction, as certified to by a Third Party engineer, or unless the state or local government has undertaken and can substantiate sufficient mitigation efforts and such documentation is submitted in the Application.

Undesirable Site Features (*select one of the boxes as applicable*)

The Development **is not** located in an area with undesirable site features as further described in §11.101(a)(2) of the Qualified Allocation Plan.

The proposed Development is Rehabilitation (excluding Reconstruction) with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs ("VA") and an exemption was requested prior to the filing of an Application or is being requested with the Application in accordance with §11.101(a)(2) of the Qualified Allocation Plan.

The proposed Development is Historic Preservation pursuant to §11.9(e)(6) of the Qualified Allocation Plan, is located in an area with an undesirable site feature and an exemption was requested prior to the filing of an Application or is being requested with the Application.

The proposed Development is New Construction, is located in an area with an undesirable site feature and a copy of the local ordinance that regulates the proximity of such feature to a multifamily development is included in the Application.

The proposed Development **is** located in an area with an undesirable site feature and mitigation to be considered by staff and the Board is included in the Application.

Neighborhood Risk Factors (select one of the main boxes as applicable)

The Development Owner certifies that the Development **is not** located in an area with any of the neighborhood risk factors described in §11.101(a)(3) of the Qualified Allocation Plan and that no disclosure is necessary;

The Development Owner certifies that the Development **is** located in an area with the following neighborhood risk factors and the Neighborhood Risk Factors Report is submitted with the Application (select all that apply):

in a census tract with a poverty rate above 40% for individuals (or 55% for Developments in regions 11 and 13);

in a census tract (or for any adjacent census tract with a boundary less than 500 feet from the proposed Development Site that is not separated from the Development Site by a natural barrier such as a river or lake, or an intervening restricted area, such as a military installation) in an Urban Area and the rate of Part I violent crimes is greater than 18 per 1,000 persons (annually) as reported on neighborhoodscout.com;

is located within 1,000 feet of a blighted or abandoned area as further described in §11.101(a)(3)(B)(iii) of the Qualified Allocation Plan;

is located in the attendance zones of an elementary, middle, or high school that does not have a 2018 Met Standard rating by the Texas Education Agency, unless the school is "Not Rated" because it meets the TEA Hurricane Harvey Provision, in which case the 2017 rating will apply. Elderly Developments are exempt from the requirement to disclose the presence of this characteristic..

The Development will include all of the mandatory Development amenities required in §11.101(b)(4) of the Qualified Allocation Plan at no charge to all residents (market rate and low-income) and written notice of such amenities will be provided to the residents.

The Development will satisfy the minimum point threshold for common amenities as further described in §11.101(b)(5) of the Qualified Allocation Plan. These amenities must be for the benefit of all residents (market rate and low-income), meet accessibility standards, be sized appropriately to serve the proposed Target Population, be made available throughout normal business hours, and be maintained throughout the Affordability Period. The residents must be provided written notice of the amenity elections made by the Development Owner.

The Development will meet the minimum size of Units as further described §10.101(b)(6)(A) of the Qualified Allocation Plan.

The Development (excluding competitive Housing Tax Credit Applications) will include enough unit and development construction features to meet the minimum number of points as further described in §11.101(b)(6)(B) of the Qualified Allocation Plan.

The Development (excluding competitive Housing Tax Credit Applications) will include enough resident supportive services, at no charge to the residents, be accessible to all residents (market rate and low-income), and maintained throughout the Affordability Period, to meet the required minimum number of points as further described in §11.101(b)(7) of the Qualified Allocation Plan, and offered in accordance with §10.619 of the Uniform Multifamily Rules. The tenant must be provided written notice of the elections made by the Development Owner.

If income averaging is elected, Unit Designations for all units identified as 20%, 30%, 40%, 50%, 60%, 70% and 80% Units will be dispersed across all Unit Types in a manner that does not violate fair housing laws, as required by 10 TAC §10.605(c), effective February 28, 2019.

If the Applicant is applying for Multifamily Direct Loan funds and the Development consists of New Construction, the Applicant further certifies that the Development meets the Construction Site Standards in 24 C.F.R §983.57(e).

If the Development has an existing LURA with the Department, the Development Owner will comply with the existing restrictions.

The Development Owner will comply with any and all notices required by the Department.

None of the criteria in subparagraphs (A) – (N) of §11.202(1) of the Qualified Allocation Plan, related to ineligible Applicants, applies to those identified on the organizational chart for the Applicant, Developer and Guarantor.

The individual whose name is subscribed hereto, in his or her individual capacity, on behalf of Applicant, and in all other related capacities described above, as applicable, expressly represents, warrants, and certifies that all information contained in this certification and in the Application, including any and all supplements, additions, clarifications, or other materials or information submitted to the Department in connection therewith as required or deemed necessary by the materials governing the multifamily funding programs are true and correct and the Applicant has undergone sufficient investigation to affirm the validity of the statements made. Further, the Applicant hereby expressly represents, warrants, acknowledges and certifies that the individual whose name is subscribed hereto has read and understands all the information contained in this form of the Application.

By signing this document, the undersigned, in their individual capacity, on behalf of Applicant, whether formed or to be formed, and in all other related capacities described above, is

affirming under penalty of Chapter 37 of the Texas Penal Code titled Perjury and Other Falsification, and subject to criminal penalties as defined by Tex. Penal Code §§37.01 et seq., and subject to any and all other state or federal laws regarding the making of false statements to governmental bodies or the providing of false information in connection with the procurement of allocations or awards, that the Application and all materials relating thereto constitute government documents and that the Application and all materials relating thereto are true, correct, and complete in all material respects.

By:

[Handwritten Signature]

Signature

Ryan Hamilton

Printed Name

Owner

Title

February 20, 2019

Date

THE STATE OF Missouri §

COUNTY OF Greene §

Before me, a notary public, on this day personally appeared Ryan Hamilton, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared and certified that the statements therein contained are true and correct.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 20th day of February, 2019

(Seal)



[Handwritten Signature]
Notary Public Signature

Franklin Trails
Undesirable Site Features

This Development is located within 500 ft of an active railroad track. In accordance with the 2019 QAP, please find the following certification that certifies that the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development.

Franklin Trails

The Development Site is located within 500 feet of active railroad tracks. Per Section 11.101(a)(2)(E)(ii), the Applicant has engaged a qualified Third Party to perform a noise assessment and the Applicant commits to perform sound mitigation in accordance with HUD standards as if they were directly applicable to the Development.



J. Ryan Hamilton

2/25/19

Date

1h

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer (#19420 Pythian Manor, Dallas)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Pythian Manor, sponsored by Steele Properties, was submitted to the Department on April 9, 2019;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on May 3, 2019, and will expire on September 30, 2019;

WHEREAS, the proposed issuer of the bonds is the Texas State Affordable Housing Corporation;

WHEREAS, pursuant to 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan related to Neighborhood Risk Factors, applicants are required to disclose to the Department the existence of certain characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the crime rate for the adjacent census tract that is within 500 feet of the development site exceeds the threshold of 18 per 1,000 persons annually;

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and based on the documentation provided and discussed herein relating to the neighborhood risk factor, recommends the proposed site be found eligible under 10 TAC §11.101(a)(3) of the 2019 Qualified Allocation Plan; and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and subject to the conditions as noted herein after review by the Executive Award and Review Advisory Committee (EARAC);

NOW, therefore, it is hereby

RESOLVED, that the site for Pythian Manor is hereby found to be eligible; and

FURTHER RESOLVED, that the issuance of a Determination Notice of \$387,412 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found

in the Real Estate Analysis report posted to the Department's website for Pythian Manor and the following EARAC conditions are hereby approved as presented to this meeting;

1. Monroe Group, Ltd., a Colorado limited liability company, is required to ensure that the Regional Property Manager attend and/or review the trainings listed in (A) and (B) and provide TDHCA with certification of attendance or completion no later than August 31, 2019.
 - A. Housing Tax Credit Training sponsored by the Texas Apartment Association;
 - B. Review of the TDHCA Compliance Training webinar:
 - i. 2012 Supportive Services Webinar Video; How to identify and properly implement Supportive Services.

BACKGROUND

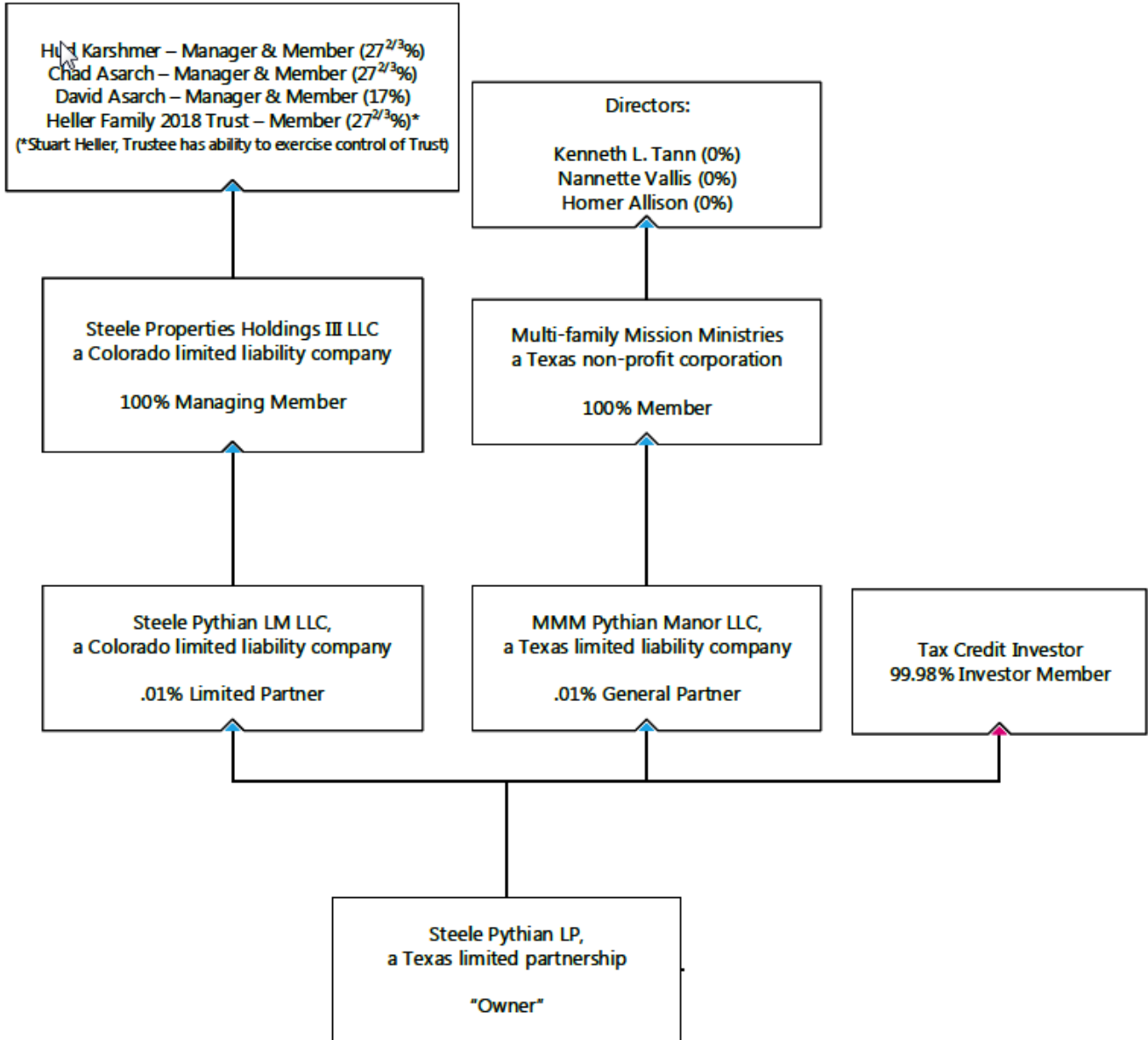
General Information: The property is located at 2719 East Illinois Avenue, Dallas, Dallas County, and involves the acquisition and rehabilitation of 76 units serving the elderly population. Eight of the units will be rent and income restricted at 30% of the Area Median Family Income (AMFI), 67 units will be restricted at 60% AMFI and one unit that had been operating as a leasing office will be converted back to a residential unit at 60% of AMFI. Pythian Manor was originally constructed in 1968, and currently is operating as a Project Based Section 8 community that covers 75 units. Because the Housing Assistance Payment (HAP) contract only covers 75 units (excluding the leasing office that is being converted to a rental unit), the property will operate as having a preference for elderly households rather than exclusively serving elderly households. Seventy-five units will operate with the age based restrictions of the HAP contract, and one unit will be available to the general public without regard to age. All units must accept otherwise qualified households with children.

Site Analysis: The presence of a neighborhood risk factor under 10 TAC §11.101(a)(3) requires additional site analysis. The risk factor attributable to Pythian Manor involves a crime rate for the adjacent census tract (88.02) which is within 500 feet of the development site that exceeds the threshold of 18 per 1,000 persons annually. According to Neighborhood Scout the Part 1 violent crime rate is 20.94 per 1,000 persons. The applicant provided actual crime data from the Dallas Police Department for instances of Part 1 violent crimes for the police beat (728) whose boundaries primarily include the adjacent census tract. For the previous two-year period, based on the corresponding population, there were 33 instances of violent crime in 2018 and 29 instances of violent crime in 2017, yielding crime rates of 8.06 and 6.46, respectively, which are below the threshold in the rule. Based on the additional information provided, staff recommends the site be found eligible.

Organizational Structure: The Borrower is Steele Pythian, LP and includes the entities and principals as indicated in the organization chart in Exhibit A. The applicant's portfolio is considered a Category 2 and subject to the conditions as noted herein.

Public Comment: There were no letters of support or opposition received by the Department.

EXHIBIT A



19420 Pythian Manor Apartments - Application Summary

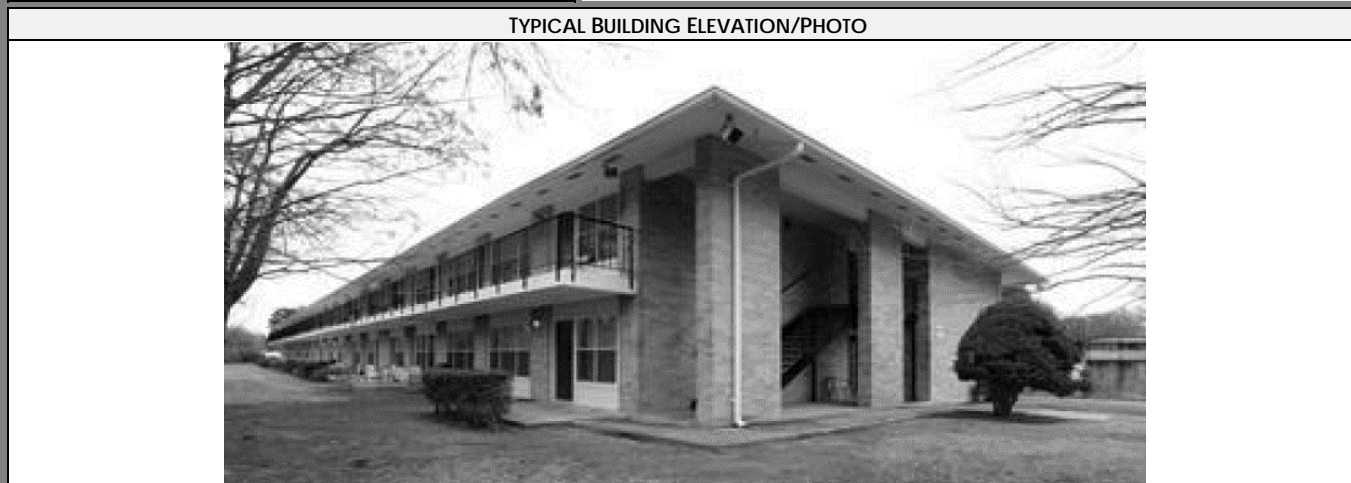
REAL ESTATE ANALYSIS DIVISION

June 20, 2019

PROPERTY IDENTIFICATION	
Application #	19420
Development	Pythian Manor Apartments
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	Elderly Preference
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1968)

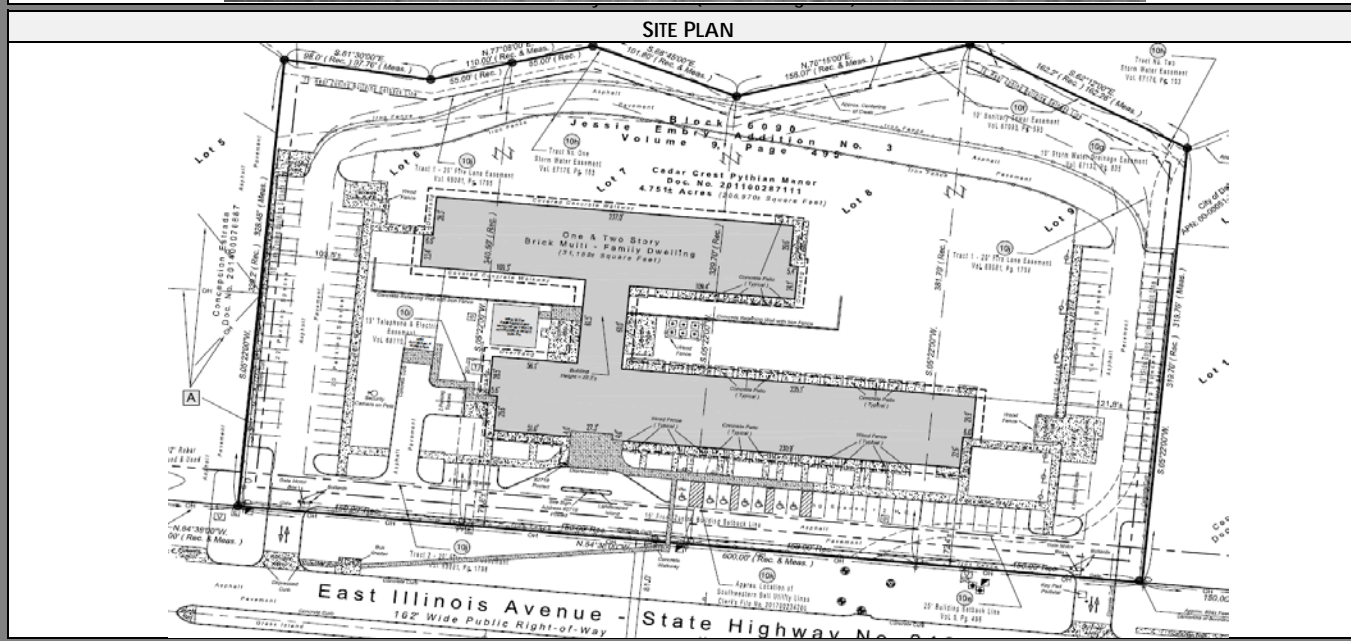
RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	\$387,412	\$387,412	\$5,098/Unit	\$0.96

KEY PRINCIPAL / SPONSOR		
Paul Moore - Development Director Steele Properties LLC, Affordable Real Estate Developers & Hud Karshmer - Manager & Member Steele Pythian Investor LLC		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	50	66%	30%	8	0%
1	26	34%	40%	-	11%
2	-	0%	50%	-	0%
3	-	0%	60%	68	0%
4	-	0%	MR	-	89%
TOTAL	76	100%	TOTAL	76	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	46.7%
Breakeven Occ.	88.4%	Breakeven Rent	\$1,058
Average Rent	\$1,138	B/E Rent Margin	\$80
Property Taxes	\$1,440/unit	Exemption/PILOT	0%
Total Expense	\$6,121/unit	Controllable	\$3,557/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			0.0%
Highest Unit Capture Rate	9%	0 BR/50%	42
Dominant Unit Cap. Rate	9%	0 BR/50%	42
Premiums (↑60% Rents)	Yes		\$191/Avg.
Rent Assisted Units	75	99% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten		TDHCA's Costs - Based on PCA	
Avg. Unit Size	426 SF	Density	16.0/acre
Acquisition			\$76K/unit \$5,750K
Building Cost	\$65.55/SF		\$28K/unit \$2,122K
Hard Cost			\$34K/unit \$2,603K
Total Cost			\$159K/unit \$12,061K
Developer Fee	\$1,372K	(15% Deferred)	Paid Year: 3
Contractor Fee	\$336K	30% Boost	Yes

REHABILITATION COSTS / UNIT			
Site Work	\$3K 10%	Finishes/Fixtures	\$12K 37%
Building Shell	\$1K 5%	Amenities	\$10K 33%
HVAC	\$3K 10%	Total Exterior	\$15K 48%
Appliances	\$2K 6%	Total Interior	\$16K 52%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Red Stone Tax-Exempt Loan	17/40	5.10%	\$7,840,000	1.144						NDC Housing & Economic Developmen	\$3,719,155
Adjustment to Debt Per §10.302(c)	17/40	5.10%	(\$45,000)	1.151						Steele Properties III LLC	\$200,387
					Partner Contribution			\$100			
					Operating Income During Development			\$346,485		TOTAL EQUITY SOURCES	\$3,919,543
TOTAL DEBT (Must Pay)			\$7,795,000							TOTAL DEBT SOURCES	\$8,141,585
					CASH FLOW DEBT / GRANTS			\$346,585		TOTAL CAPITALIZATION	\$12,061,128

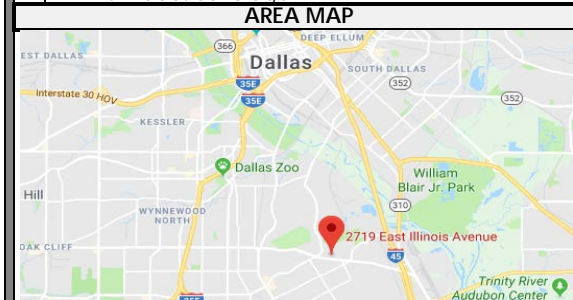
CONDITIONS

- Receipt and acceptance before Determination Notice:
 - New executed Section 8 contract with HUD with all terms and conditions, including Section 8 Contract Rents of \$1,085 for the Studios and \$1,250 for the 1 Bd, on a total of 75 units.
- Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - Certification of comprehensive testing for asbestos and lead-based paint; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials or lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
 - Certification of comprehensive testing for Lead in Drinking Water and that any appropriate abatement measures were implemented.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Ordable Housing Corporation (TSAHC)
Expiration Date	9/30/2019
Bond Amount	\$8,300,000
BRB Priority	Priority 3
Close Date	TBD
Bond Structure	Private Placement with Redstone
% Financed with Tax-Exempt Bonds	80.6%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Proximity to Downtown Dallas
▫	Waiting list mitigates stabilization risk
WEAKNESSES/RISKS	
▫	Very small unit sizes (426 sf average)
▫	Dependent on HUD acceptance of MUTM rents.
▫	Minimum debt coverage



1i

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

1j

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Royal Gardens Mineral Wells (HTC #15340)

RECOMMENDED ACTION

WHEREAS, Royal Gardens Mineral Wells (the Development) was originally submitted and approved for a Housing Tax Credit (HTC) allocation and an award of HOME funds in 2012;

WHEREAS, as a result of Force Majeure, the Development Owner returned the 2012 credits and was re-allocated credits out of the 2015 credit ceiling, and the HOME loan was repaid;

WHEREAS, the consultant for 1500 MLK, LLC (the Development Owner or Owner) has submitted a request for approval for a reduction in the common area from 2,994 to 2,765 square feet, representing a reduction of 7.65% or 229 square feet from the original design represented at Application;

WHEREAS, Board approval is required for a reduction of three percent or more in the square footage of the common areas as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements therein; and

WHEREAS, the requested change does not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the requested amendment for Royal Gardens Mineral Wells is approved as presented at this meeting, and the Acting Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Royal Gardens Mineral Wells was approved for a 9% HTC award and a HOME loan in 2012 to construct 75 units in Mineral Wells, Palo Pinto County. On April 1, 2014, the Development, which was then under

construction, was destroyed in a fire. As a result, the Owner subsequently submitted a letter to the Department returning the housing tax credits and requesting that the credits be reissued to the same Development pursuant to §11.6(5) of the 2015 QAP, related to Credits Returned Resulting from Force Majeure Events. The re-issuance of the credits out of the 2015 credit ceiling was approved by the Board on June 16, 2015, and a new Carryover Allocation Agreement was executed in 2015. The HOME loan from the Department was paid off after the fire, although the Land Use Restriction Agreement remains on the Development. Construction of the Development was finalized in late 2016, and the cost certification documentation is currently under review by staff.

In a letter dated May 18, 2019, Lora Myrick, the consultant for the Development Owner, requested approval for a material amendment to the original common area design plan and square footage. The request seeks approval for a reduction in the common area from 2,994 to 2,765 square feet, representing a reduction of 7.65% or 229 square feet from the original design represented at Application.

A comparison of the floor plans of the proposed and as-built clubhouse revealed that the design changed substantially, and the previously proposed corridor bisecting this building and connecting this building to the residential building was not constructed. Net of the proposed corridor within the clubhouse, the as-built clubhouse (2,765 square feet) is 229 square feet smaller than the clubhouse proposed in the application (2,994 square feet). This reduction of 7.65% exceeds the 3% threshold stated in in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and therefore, requires board approval. A comparison of the site plan design from Application to this amendment is in the table below.

Material Alterations as defined in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D)	
Application	Amendment
Common Area: 2,994 square feet (3,177 sq. ft. underwritten)	Common Area: 2,765 square feet (229 square feet or a 7.65% reduction)

The Owner's consultant explained that, while this change is a result of the original plans being modified to accommodate increased costs for the Development, the difference in square footage is ultimately due to human error. According to the amendment request letter, an incorrect plan for the clubhouse and corresponding auxiliary buildings and/or common areas in the architectural package was provided to the Applicant, and included in the initial application in 2012. However, it must be noted that this difference was not identified until the cost certification documentation was submitted to the Department and reviewed by staff.

Furthermore, staff's review revealed that, while the architectural drawing for the clubhouse submitted with the Application identified 2,100 square feet of common area, the most recent underwriting reports identified a common area of 3,177 square feet, based on staff's measurements. Upon further review at cost certification, it was determined that the 2,100 square feet stated in the floor plan did not include all spaces reflected in the drawing.

Staff has determined that the proposed change noted above would not have impacted the scoring of the Application, or materially impacted the most recent underwriting analysis. However, the final credit amount will be confirmed upon finalization of the cost certification review.

Staff recommends approval of the amendment request as presented.



May 18, 2019

Texas Department of Housing and Community Affairs
Asset Management Division
Attn: Mr. Rosalio Banuelos, Director
221 E 11th Street
Austin, Texas 78701

Via Email: Rosalio.Banuelos@tdhca.state.tx.us

Re: TDHCA Application #15340 – Royal Gardens Mineral Wells Material Amendment Request

Dear Mr. Banuelos,

We are formally requesting an amendment for the above-referenced housing tax credit application. A check for the amendment fee in the amount of \$2,500 has been included with this request.

We would like to amend the square footage of the club house. The square footage has changed from 2,994 sq. ft. to 2,765 sq. ft., as reflected in the attached Exhibit A. While this change is a result of the original plans being modified to accommodate increased building costs for the development, ultimately, this was a case of human error. An incorrect plan for the clubhouse and corresponding auxiliary buildings and/or common areas in the architectural package was provided to and included by the Applicant at initial Application submission in 2012. The plans filed with the Application in 2012 are attached and labeled Exhibit B.

The correct plans that should have been part of the original architectural package were the plans used to actually build the clubhouse and common spaces and are reflective of what is standing at the development presently.

There is a clear change in square footage from what was represented in the original Application to what was actually built. We further confirm that the changes in square footage have resulted in a greater percentage than the 3% variance allowed in the rule.



We are asking for this amendment to correct a previously unidentified and unforeseen human error—the incorrect plans that were originally submitted in the HTC Application.

Though unintentional, the change in square footage has resulted in a reduction in common area (clubhouse) square footage that is greater than 3%. In accordance with Section 10.405(a)(3) of Subchapter E of the Uniform Multifamily Rules, we submit this request for a material change to the application.

It should be noted that this change does not negatively affect the proposed development, as it does not impact the viability of this transaction. There were no substantial changes to the development costs as a result of the changes mentioned above. Finally, the square footage of the units was not impacted and all amenities, as represented in the Application, are present. Therefore, we respectfully request approval of this amendment request.

If you have any questions, please do not hesitate to contact me directly at (512) 785-3710 or via email at lora@betcohousinglab.com any time.

Sincerely,

Lora Myrick, Principal
BETCO Consulting, LLC

w/Attachments

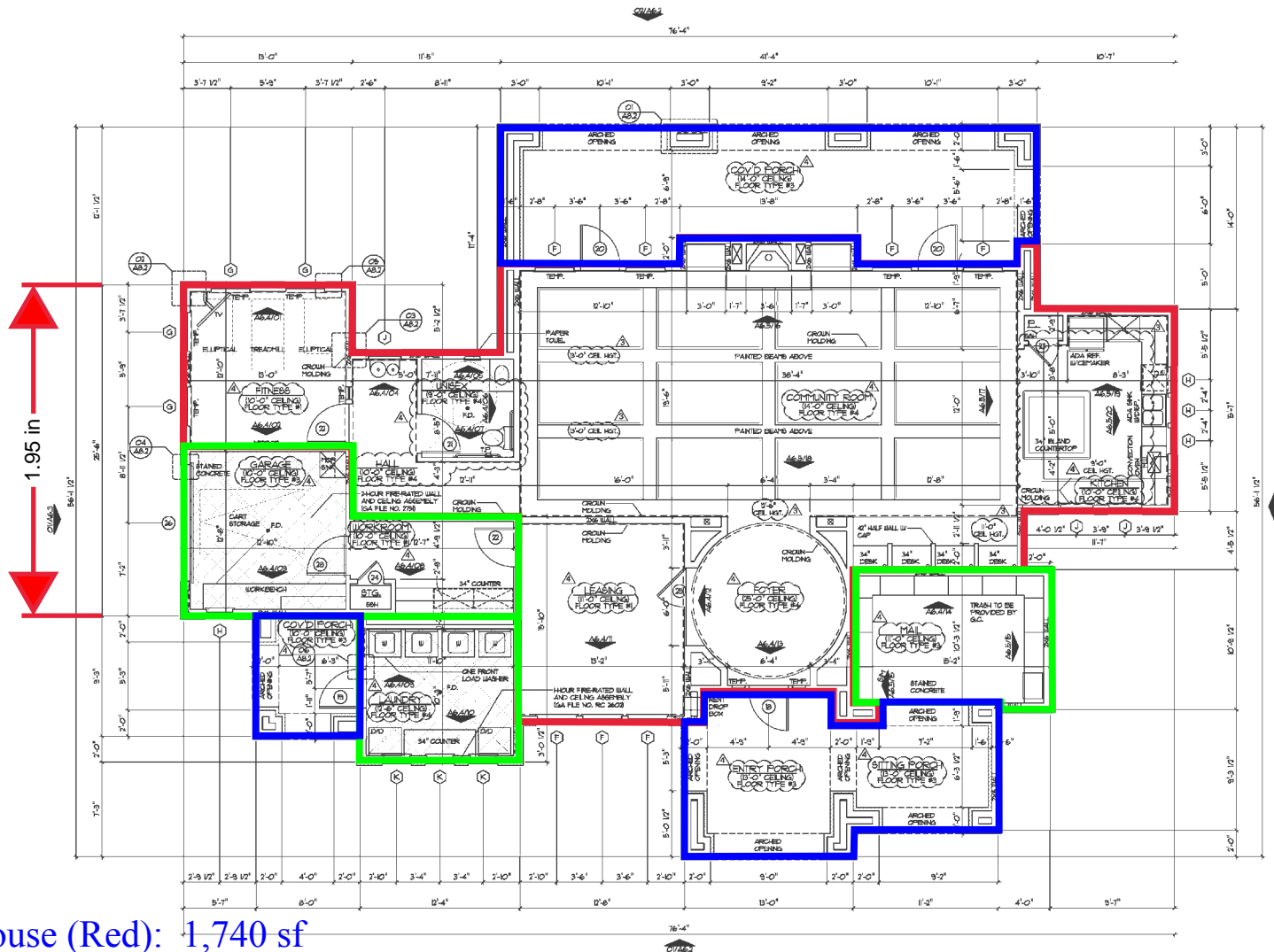
cc: Noorallah Jooma

Exhibit A

15340 - 12174 Mineral Wells Clubhouse

	Original Clubhouse Floor Plan	Final Clubhouse Floor Plan	Variance	% Variance
Clubhouse	2,100	1,740	(360)	-17.14%
Laundry/Mail	244	291	47	19.26%
Porch(es)	650	734	84	12.92%
	<u>2,994</u>	<u>2,765</u>	<u>(229)</u>	<u>-7.65%</u>

FINAL CLUBHOUSE FLOOR PLAN - 15340 MINERAL WELLS



- Clubhouse (Red): 1,740 sf
- Laundry (Green): 135 sf
- Mail (Green): 156 sf
- Maintenance (Green): 268 sf
- Porches (Blue): 260 + 74 + 400 = 734 sf

01 CLUBHOUSE FLOOR PLAN
SCALE: 1/4"=1'-0"



CROSS ARCHITECTS, PLLC
1255 W. 15TH. ST., SUITE 125
PLANO, TEXAS 75075
PH: 972.398.8644
FAX: 972.312.8666
brumsey@crossarchitects.com



ROYAL GARDENS
APARTMENTS
MINERAL WELLS, TEXAS

PROJECT:
ROYAL GARDENS
APARTMENTS
MINERAL WELLS, TEXAS

75 UNITS

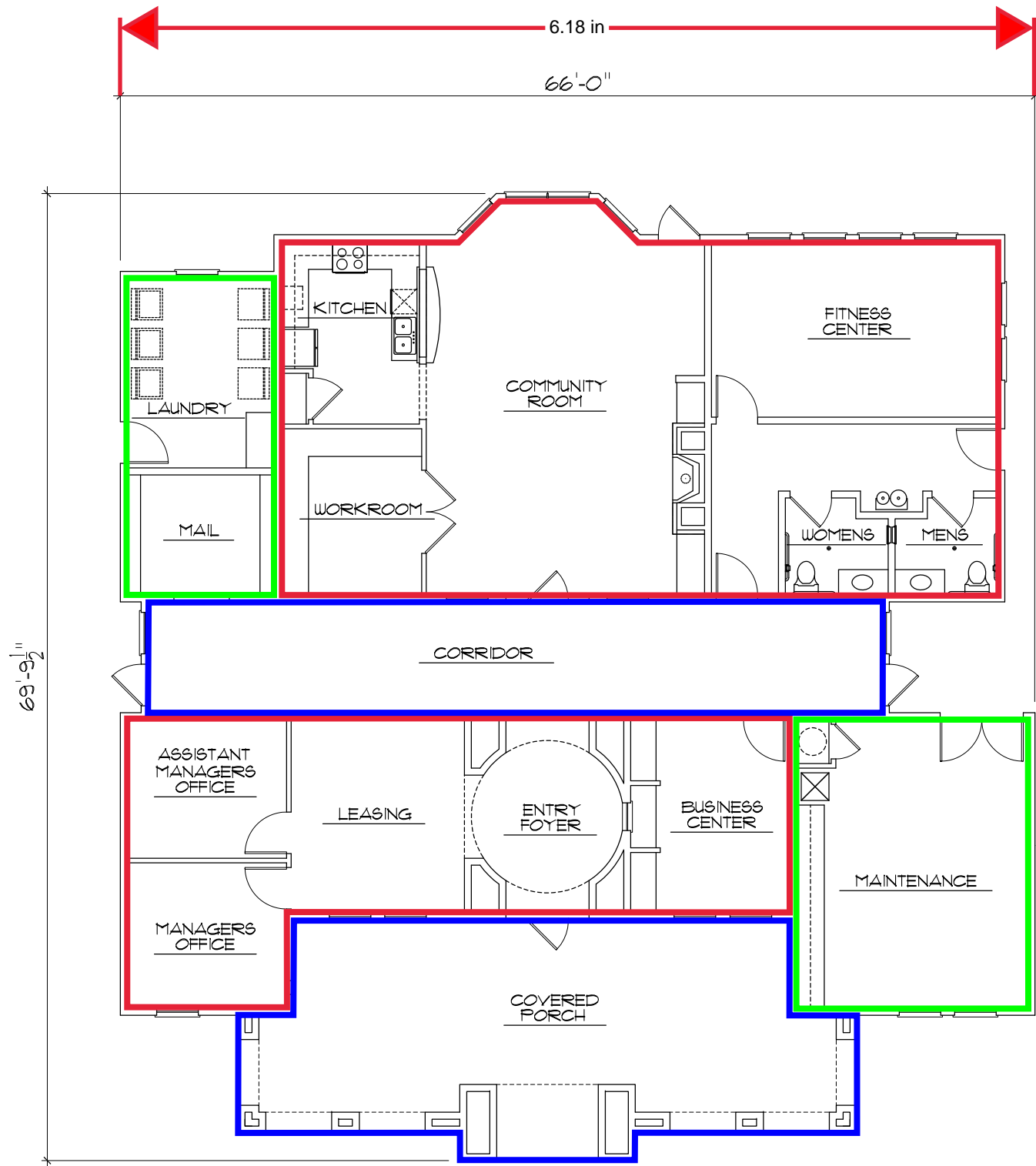
REVISIONS	
NO.	DATE
1	02-06-13
2	04-05-13

DRAWINGS ISSUED FOR:

CONSTRUCTION	DATE:	10/01/12
ISSUE	PROJ. NO.:	12020
APR 05 2013	SHEET NUMBER	A6.0
		CLUBHOUSE FLOOR PLAN

ORIGINAL CLUBHOUSE FLOOR PLAN - 12174 MINERAL WELLS

Exhibit B



Clubhouse (Red): $1,350 + 750 = 2,100$ sf
 Laundry/Mail (Green): 244 sf
 Maintenance (Green): 350 sf
 Porch (Blue): 650 sf
 Corridor (Blue): 425 sf

- CLUBHOUSE AMENITIES:**
- FURNISHED FITNESS CENTER
 - EQUIPPED AND FUNCTIONING BUSINESS CENTER
 - COMMUNITY LAUNDRY ROOM

ROYAL GARDENS
 MINERAL WELLS, TEXAS

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Reserve at Quebec (HTC #15407)

RECOMMENDED ACTION

WHEREAS, Reserve at Quebec (the Development) received an award of 4% Housing Tax Credits (HTCs) in 2015 for the construction of 296 units of multifamily housing in Fort Worth (the City), Tarrant County;

WHEREAS, Reserve at Quebec, LLC (the Development Owner or Owner) is requesting approval for a modification of the residential density of 5.42% related to the Owner deeding a portion of the site to the City to create a roundabout and a public right-of-way along the Development site, decreasing the area of the Development site from 15.706 acres to 14.899 acres;

WHEREAS, Board approval is required for a modification of the residential density of at least five percent as directed in Tex. Gov't Code §2306.6712 and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

WHEREAS, the requested change does not materially alter the Development in a negative manner, was not reasonably foreseeable or preventable by the Owner at the time of Application, and would not have adversely affected the selection of the Application;

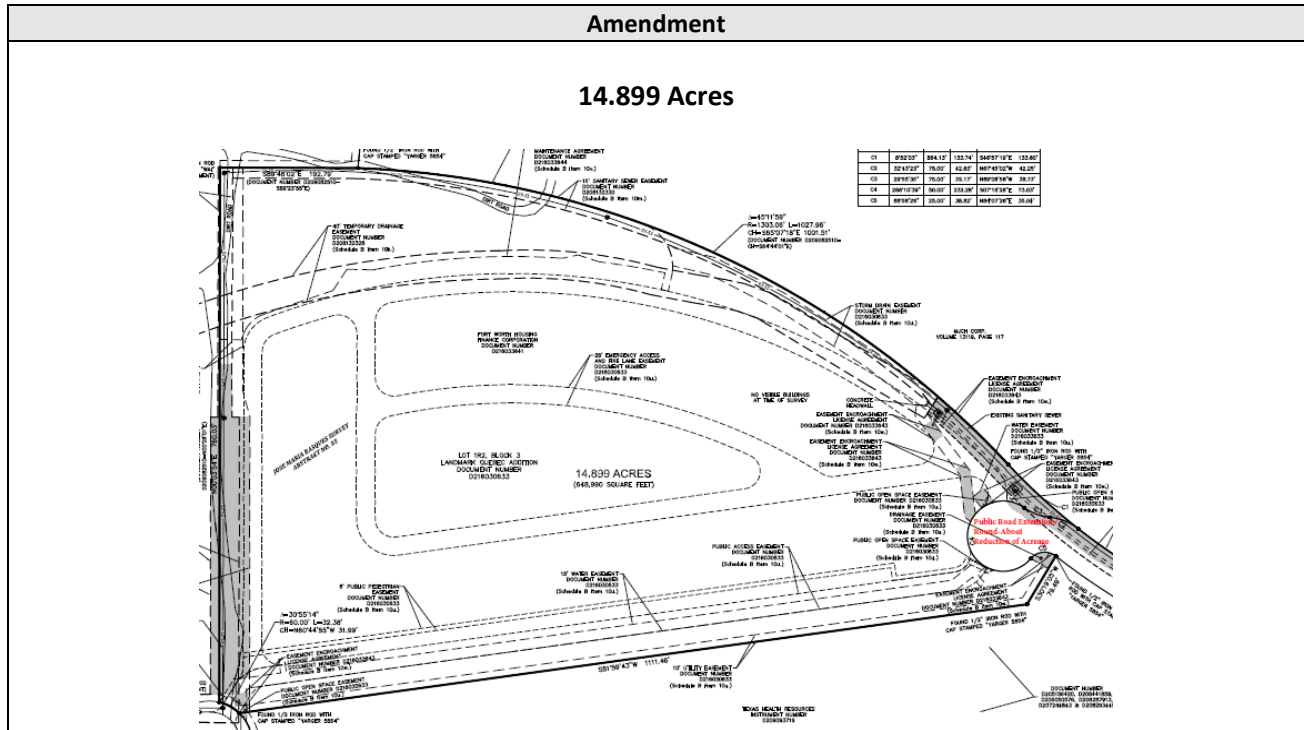
NOW, therefore, it is hereby

RESOLVED, that the requested material amendment to the Application for Reserve at Quebec is approved as presented at this meeting, and the Acting Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Reserve at Quebec was approved in 2015 for an award of 4% Housing Tax Credits to construct 296 general multifamily housing units in Fort Worth, Tarrant County. Construction of the Development has been completed, and the cost certification documentation is currently under

The table below shows the roundabout created from a portion of land deeded to the City of Fort Worth. Calgary Lane extends southeast from the roundabout. The letter from the Owner states that the Owner paid for all costs associated with the road improvements through an off-site construction contract with the City. The City agreed to maintain the newly constructed road.



The Owner explained that this amendment was not foreseeable or preventable at application because it was unknown that it would be necessary to deed land to the City of Fort Worth. The Owner also stated that the project will still serve the same number of families as those at application, and that the reduction in acreage will not impact the financial characteristics of the Development, the amenities offered, or the general layout of the Development.

Staff has reviewed the original application against this amendment request and has concluded that the change described above would not have affected the award. The final tax credit recommendation will be determined upon finalization of the cost certification review process.

Staff recommends approval of the requested material amendment to the Application.



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 4/26/2019

Amendment Requested: *Material Application Amendment*,

Has the change been implemented? *Yes*

Award Stage: *Cost Certification (Prior to 8609s)*

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

[Contact](#) your Asset Manager if you are unsure what type of Amendment to request. Amendment submission requirements and Board dates pertaining to Material Amendments are located on the [Post Award Activities Manual page](#).

DEVELOPMENT INFORMATION

Dev. Name: Reserve at Quebec

File No. / CMTS No.: 15407 /

CONTACT INFORMATION

Request Submitted By: Justin Gregory

Phone #/Email: (513) 964-1152
/justin.gregory@mvaahpartners.com

SECTION 1: COVER LETTER

A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested
- The reason the change is necessary
- The good cause for the change
- An explanation of whether the change was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You **MUST** provide information about any changes made from the time of Application (or as last approved by the Department) in your request, including items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Application Exhibits/Documents Reflecting and Verifying All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, agreements and org charts reflecting changes in Developers or Guarantors, etc.
- Revised Development Financing Exhibits or a Signed Statement of No Financial Impact – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets may be necessary (generally Material Amendments only)
- Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, increase of \$500 for each successive amendment (Applicable only to Material Amendments and Non-Material Amendments if changes have already been implemented) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Post Award Rules, §10.405(a)(3)*):

- | | | |
|---|--|---|
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Scope of tenant services | <input type="checkbox"/> Exclusion of reqs in §11.101 or §11.201. |
| <input type="checkbox"/> Number of units* | <input type="checkbox"/> Reduction of 3%+ in unit sq ft | <input type="checkbox"/> Req. to implement a revised set aside election |
| <input type="checkbox"/> Bedroom mix | <input type="checkbox"/> Reduction of 3%+ common area | <input type="checkbox"/> Other |
| <input type="checkbox"/> Architectural design | <input checked="" type="checkbox"/> Residential density (5%+ change) | |

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

If “Request to implement a revised set aside” is selected above, also:

- Revised financial exhibits to the Application
- Written acknowledgement from all lenders and the syndicator that they are aware of the changes being requested and confirm any changes in terms as a result of the new election

NOTE: **The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- | | | |
|---|--|---|
| <input type="checkbox"/> Reductions to the number of LI units | <input type="checkbox"/> Changes to Target Population | <input type="checkbox"/> Affecting Rights of Tenant/3 rd Parties |
| <input type="checkbox"/> Changes to income or rent restrictions | <input type="checkbox"/> Removal of Non-profit | <input type="checkbox"/> Other |
| <input type="checkbox"/> Change in ROFR period/provisions | <input type="checkbox"/> Request to implement a revised set aside election | |

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing*
- Evidence of public hearing*

NOTE: **Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Check or explain items that require a non-material Application amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

- Amendment is requesting a change in Developer(s) or Guarantor(s) and pre and post change org charts, agreements to the change, and Previous Participation forms are attached.
- Changes in natural person(s) used to meet the experience requirement.
- Representations made in the Application that exceed the scope of a notification item: Describe items needed

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Check or explain items that require a non-material LURA amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

- HUB participation removal (request must also include documentation showing that a) the HUB is requesting removal of its own volition or is being removed as a result of default, b) the participation has been substantive or meaningful, and c) where the HUB will be replaced as a GP or SLP that is not a HUB and will sell its ownership interest, an ownership transfer request has also been submitted). HUB removal requests will only be considered after the issuance of 8609s.
- A change resulting from a Department work out arrangement as recommended by TDHCA.
- A correction of error (Amendments to Applicable Fractions, BIN lists, Accessible Units, etc.)
- Changes in amenities or supportive services that are referenced in the LURA (Requests to change amenities should address whether an amenity will be replaced by an item of equal benefit or point value).
- Other Representations made in the LURA not identified above: Describe items needed

SECTION 4C: NOTIFICATION ITEM SUMMARY

Check or explain items that require a notification to the Department:

- Change to the Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies (less than 5% change in density)
- Minor modifications to the site plan that will not significantly impact costs (relocation or rearrangement of buildings, changes in ingress/egress, etc.)
- Increases or decreases in net rentable square footage or common areas (less than 3% change)
- Changes in amenities not requiring a change to the LURA or negatively impacting scoring
- Changes in Developers or Guarantors with no new Principals
- Other: Describe items needed

April 26th, 2019

Texas Department of Housing and Community Affairs

Mark Fugina
Associate Asset Manager
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.2109

Re: Request for Amendment
Reserve at Quebec
TDHCA #15407

Dear Mr. Fugina,

The letter is from Reserve at Quebec, LLC (“**Owner**”) in connection with the development of the Reserve at Quebec (“**Project**”). Owner received an allocation of low-income housing tax credits in 2015. The Project is a completed 296-unit new construction development to be in Fort Worth, Tarrant County, Texas, currently in cost certification. We are submitting this request to materially modify representations in the application regarding the acreage of the development site. As you will see, we have deeded a portion of the development site to the City of Fort Worth to be used as an extension of an existing public road. This explains the discrepancy between the boundary survey that depicted the land to be purchased at the time of application and the as-built survey that depicts the development site after a portion was deeded to the City of Fort Worth.

Amendment Request:

The original application and LURA show a total site acreage of 15.706 acres; however, the Architect’s certification indicates 14.899 acres. As currently provided, the acreage change results in a material amendment request based on a greater than 5% change in acreage that affects a 5% change in density. Below is a portion of an email that Rosalio Banuelos sent Reserve at Quebec, LLC in December 5, 2017:

“In addition to the items listed as outstanding in the email below, there is one item that requires further attention. The plat seems to indicate that the area of the development site is 14.899 acres, which is more than 5% lower than the 15.706 acres identified at application. Please explain this reduction, and please be aware that a change to the residential of the development of 5% or more requires a material amendment to the application. If my reading of the plat is correct and this change has not been approved by the Department, please submit a written amendment request and the required fee in the amount of \$2,500; this change will require approval from the Department’s board. However, given that the LURA must be recorded by December 31 of the first year of the credit period, it might be best to process the LURA with the legal description approved at application and amend it once board approval has been obtained. Please let me know how you would like to proceed.”

Description of Amendment

1. In order to be a good partner with the City of Fort Worth, the Owner has taken steps to modify the site acreage of Project. Such revisions will not materially alter the Project in a negative manner.
2. The change was to deed a portion of the original land to be purchased by the Owner to the City of Fort Worth as public improvements, specifically a roundabout, and as a public right of way. This was mutually beneficial to both parties as the development paid for these improvements through an off-site construction contract with the City of Fort Worth and the City of Fort Worth agreed to maintain the newly extended road.
3. In all material respects, the Project will still serve the same number of families at the same income levels in a high-quality living environment that achieves the goals of the low-income housing tax credit program.
4. Other the more than 5% reduction in the total acreage of the property; no aspects of the design, the financial characteristics of the development, the amenities offered by Reserve at Quebec, or the general layout of the development have been changed.

The changes described above are illustrated in the attached revised and final survey (see Exhibit "A") and as additionally confirmed and certified by the surveyor (see Exhibit "B"). None of these changes necessitate revising the Development Financing Exhibits and Owner has executed a Statement of No Financial Impact to that effect (see Exhibit "C").

The Reserve at Quebec is still providing the same number of housing units, to the same resident demographics, with the same site and building layout. What has changed is that the City of Fort Worth now maintains a public road that was extended and serves the Reserve at Quebec. Although the acreage of the development has changed, no other material aspects of the development were offered.

For all these reasons, we respectfully request that you favorably consider and approve this proposed amendment.

If you have any questions or concerns regarding this matter or if you need additional information, please do not hesitate to contact me.

Sincerely,



Justin Gregory

EXHIBIT A

FINAL SURVEY REFLECTING ACREAGE NOT DEEDED TO CITY

EXHIBIT B

CERTIFICATION OF AREA FROM SURVEYOR



April 2, 2019

Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701
Attn: Mark Fugina

Re: **Reserve at Quebec**
FHA Project Number 113-35645

Dear Mr. Fugina:

This letter shall serve as further certification that the area, 648,994 square feet or 14.899 acres shown on our survey of the referenced site, dated May 7, 2018, last revised August 30, 2018 is correct.

Sincerely,
Piburn & Company, LLC

John R. Piburn, Jr. RPLS
President

EXHIBIT C

STATEMENT OF NO FINANCIAL IMPACT

STATEMENT OF NO FINANCIAL IMPACT

By executing this letter, the undersigned, on behalf of owner, hereby acknowledges and agrees that the amendments to the application requested in this letter do not affect, and have no financial impact on, the existing sources, terms, conditions, or amount of financing for the project.

OWNER:

RESERVE AT QUEBEC, LLC,
a Texas limited liability company

By: 

Name: Brian McGeady

Title: Authorized Signer

Date: 04/26/2019

1k

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Oakwood Place Apartments (HTC #99001)

RECOMMENDED ACTION

WHEREAS, Oakwood Place Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 1999 to rehabilitate 205 multifamily units in Dallas, Dallas County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period and for having a Historically Underutilized Business (HUB) as the Managing General Partner and maintain regular, continuous, and substantial participation in the development and operation of the Development;

WHEREAS, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Wadsworth Apartments, Ltd., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015 and to remove the requirement that the HUB participate in the ownership of the Development;

WHEREAS, removal of a HUB requirement from the LURA is a non-material amendment under 10 TAC §10.405(b)(1)(A) but has been included for approval with this request, and amendment to the ROFR period in the LURA is a material amendment requiring Board approval under 10 TAC §10.405(b)(2)(E); and

WHEREAS, the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

NOW, therefore, it is hereby

RESOLVED, that the material and non-material LURA amendments for Oakwood Place Apartments are approved as presented to this meeting, and the Acting Director and his

designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Oakwood Place Apartments received a 9% Housing Tax Credit (HTC) award in 1999 to rehabilitate 205 multifamily units in Dallas, Dallas County. In a letter dated May 3, 2019, the Development Owner, Wadsworth Apartments, Ltd. (Alex Stolarski), requested approval to amend the HTC LURA related to the ROFR provision and to remove the HUB requirement from its LURA in anticipation of a potential sale of the property.

In 1999, the Housing Tax Credit application allotted five points to the Owner in exchange for a two-year ROFR posting period. Upon completion of the Development rehabilitation, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of February 28, 2001, and recorded in Dallas County on June 8, 2001.

As approved in 1999, the additional use restrictions in the current LURA require, among other things, a 20-year Compliance Period, a 35-year Extended Use Period, regular, continuous and substantial participation of a HUB in the development, operation and ownership of the project throughout the Compliance Period, and a two-year ROFR to sell the Development (if at any time after the fifteenth year of the Compliance Period if the Owner decides to sell the property) based on a set order of priority to: 1) a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)) that is also a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), 2) a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)) or a tenant organization, or 3) the Department, a Qualified Nonprofit Organization approved by the Department, or a Tenant Organization approved by the Department. The property is currently in the 19th year of the 20-year Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to allow for a 180-day ROFR period.

In 2015, the Texas Legislature passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Owner has also requested, as part of this action, to remove the HUB requirement from the LURA of the Development in anticipation of a potential sale of the property. Under §10.405(b)(1)(A), removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the Executive Director find that: (i) the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of

the Development Owner; (ii) the participation by the HUB has been substantive and meaningful, and (iii) where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request has been submitted. At this time, the current and original HUB, Hamishi Corporation, has stated that it is acting of its own volition in making the request and has verified that its participation in the development and operation of the property has been and will continue to be substantive and meaningful until any future sale takes place. No Ownership Transfer request has been submitted for the Development at this time, but once a buyer is found, an ownership transfer request must be submitted as described in 10 TAC §10.406.

The Development Owner has complied with the amendment and notification requirements under Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on May 8, 2019, at the Development's onsite community management office/clubhouse. No negative public comment was received regarding the requested amendments.

Staff recommends approval of both amendment requests as presented herein.



Asset Management Division

Amendment Request Form

Completed forms and supporting materials can be emailed to asset.management@tdhca.state.tx.us

TYPE OF AMENDMENT REQUESTED

Date Submitted: 5/6/2019

Amendment Requested: *Material LURA Amendment,*

Has the change been implemented? *No*

Award Stage: *Select From List Post 15 Year CP*

NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.

[Contact](#) your Asset Manager if you are unsure what type of Amendment to request. Amendment submission requirements and Board dates pertaining to Material Amendments are located on the [Post Award Activities Manual page](#).

DEVELOPMENT INFORMATION

Dev. Name: Oakwood Apartments

File No. / CMTS No.: 99001/

CONTACT INFORMATION

Request Submitted By: Rebecca Rizo

Phone #/Email: (512) 305-4781 /

SECTION 1: COVER LETTER

A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested The reason the change is necessary The good cause for the change
 An explanation of whether the change was reasonably foreseeable or preventable at the time of Application

SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You **MUST** provide information about any changes made from the time of Application (or as last approved by the Department) in your request, including items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Application Exhibits/Documents Reflecting and Verifying All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, agreements and org charts reflecting changes in Developers or Guarantors, etc.
- Revised Development Financing Exhibits or a Signed Statement of No Financial Impact – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets may be necessary (generally Material Amendments only)
- Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, increase of \$500 for each successive amendment (Applicable only to Material Amendments and Non-Material Amendments if changes have already been implemented) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Post Award Rules, §10.405(a)(3)*):

- | | | |
|---|---|---|
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Scope of tenant services | <input type="checkbox"/> Exclusion of reqs in §11.101 or §11.201. |
| <input type="checkbox"/> Number of units* | <input type="checkbox"/> Reduction of 3%+ in unit sq ft | <input type="checkbox"/> Req. to implement a revised set aside election |
| <input type="checkbox"/> Bedroom mix | <input type="checkbox"/> Reduction of 3%+ common area | <input type="checkbox"/> Other |
| <input type="checkbox"/> Architectural design | <input type="checkbox"/> Residential density (5%+ change) | |

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

If “Request to implement a revised set aside” is selected above, also:

- Revised financial exhibits to the Application
- Written acknowledgement from all lenders and the syndicator that they are aware of the changes being requested and confirm any changes in terms as a result of the new election

NOTE: **The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- | | | |
|--|--|---|
| <input type="checkbox"/> Reductions to the number of LI units | <input type="checkbox"/> Changes to Target Population | <input type="checkbox"/> Affecting Rights of Tenant/3 rd Parties |
| <input type="checkbox"/> Changes to income or rent restrictions | <input type="checkbox"/> Removal of Non-profit | <input type="checkbox"/> Other |
| <input checked="" type="checkbox"/> Change in ROFR period/provisions | <input type="checkbox"/> Request to implement a revised set aside election | |

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing*
- Evidence of public hearing*

NOTE: **Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. *The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Check or explain items that require a non-material Application amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

- Amendment is requesting a change in Developer(s) or Guarantor(s) and pre and post change org charts, agreements to the change, and Previous Participation forms are attached.
- Changes in natural person(s) used to meet the experience requirement.
- Representations made in the Application that exceed the scope of a notification item: Describe items needed

SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Check or explain items that require a non-material LURA amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

- HUB participation removal (request must also include documentation showing that a) the HUB is requesting removal of its own volition or is being removed as a result of default, b) the participation has been substantive or meaningful, and c) where the HUB will be replaced as a GP or SLP that is not a HUB and will sell its ownership interest, an ownership transfer request has also been submitted). HUB removal requests will only be considered after the issuance of 8609s.
- A change resulting from a Department work out arrangement as recommended by TDHCA.
- A correction of error (Amendments to Applicable Fractions, BIN lists, Accessible Units, etc.)
- Changes in amenities or supportive services that are referenced in the LURA (Requests to change amenities should address whether an amenity will be replaced by an item of equal benefit or point value).
- Other Representations made in the LURA not identified above: Describe items needed

SECTION 4C: NOTIFICATION ITEM SUMMARY

Check or explain items that require a notification to the Department:

- Change to the Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies (less than 5% change in density)
- Minor modifications to the site plan that will not significantly impact costs (relocation or rearrangement of buildings, changes in ingress/egress, etc.)
- Increases or decreases in net rentable square footage or common areas (less than 3% change)
- Changes in amenities not requiring a change to the LURA or negatively impacting scoring
- Changes in Developers or Guarantors with no new Principals
- Other: Describe items needed

WADSWORTH APARTMENTS, LTD.

2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

VIA HAND DELIVERY

Ms. Lee Ann Chance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 99001; Oakwood Place Apartments (the "**Property**")

Dear Lee Ann:

Hamishi Corp. ("**Hamishi**") is the general partner and HUB member of Wadsworth Apartments, Ltd., Texas limited partnership (the "**Partnership**"), the current owner of the Property. This letter constitutes request for a material LURA amendment in order to (1) remove the ongoing requirement for participation of a Historically Underutilized Business ("**HUB**") and (2) modify the two-year Right of First Refusal ("**ROFR**") period.

Request for HUB Restriction Removal

The LURA for this Property requires ownership participation by a HUB. Hamishi has been serving as a HUB since the Property was awarded tax credits. Hamishi acting on behalf of the Partnership, requests that TDHCA remove the HUB requirement from its LURA in anticipation of a potential sale of the Property. This change will not result in any financial impact to the Property and the need for the change was not foreseeable at the time of the application.

Section 10.405(b)(1)(a) of the Rules recognizes that a LURA can be amended or remove the ongoing HUB participation requirement. Hamishi asks TDHCA to approve this amendment to facilitate the removal of the HUB restriction in anticipation of a potential sale of the Property. In accordance with the Rules, Hamishi certifies to TDHCA as follows:

(1) Hamishi was not removed from its position and is acting of its own volition in making this request as evidenced in the executed statement of the HUB attached as Exhibit A.

(2) Hamishi's participation as the HUB with regard to the Property is substantive and meaningful, and will continue to be so until the anticipated sale of the Property is effectuated and approved by TDHCA.

Request to Amend ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore Hamishi, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment

In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of \$2500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors and lenders as to these proposed amendments. The Partnership will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

Hamishi Corp.,
a Texas corporation



By:

Alex Stolarski, President

WADSWORTH APARTMENTS, LTD.
2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

Dear Resident:

Oakwood Place Apartments (the "**Community**") is owned by Wadsworth Apartments, Ltd. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

The Owner is currently structured to include Hamishi Corp., a Texas corporation, the general partner and a State of Texas certified Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner desires to have this provision removed from its contract and, therefore, is requesting the Department's approval to remove the ongoing requirement for HUB participation from its contract.

Additionally, a contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period. TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the Property.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community's management office/clubhouse on **Wednesday, May 8, 2019, at 4:30 p.m.** Information from this meeting will be submitted for consideration by the Department's governing board at its next available meeting.

Please note that this proposal will **not** affect your current lease agreement, your rent payment, or your security deposit. You will **not** be required to move out of your home or take any other action because of this change. If the Department approves the Owner's request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to asset.management@tdhca.state.tx.us or you may mail them to:

Texas Department of Housing and Community Affairs
Asset Management Division
221 East 11th Street
Austin, Texas 78701

We appreciate that Oakwood Place Apartments is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Oakwood Place Apartments as your home.

Sincerely,

WADSWORTH APARTMENTS LTD.

a Texas limited partnership

By: Hamishi Corp.,
a Texas corporation,
its general partner



By: _____
Alex Stolarski, President

WADSWORTH APARTMENTS, LTD.
2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

The Stolarski Family Trust
2010 Estrada Pkway
Irving, Texas 75061

To Whom It May Concern:

Wadsworth Apartments, Ltd. (the "**Owner**") is the owner of Oakwood Place Apartments (the "**Community**") which is located 495 Wadsworth Drive, Dallas, Texas 75216. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

The Owner is currently structured to include Hamichi Corp., a Texas corporation, the general partner and a State of Texas certified Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner desires to have this provision removed from its contract and, therefore, is requesting the Department's approval to remove the ongoing requirement for HUB participation from its contract.

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **Wednesday, May 8, 2019 at 4:30 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

WADSWORTH APARTMENTS LTD.
a Texas limited partnership

By: Hamishi Corp.,
a Texas corporation,
its general partner



By: _____
Alex Stolarski, President

WADSWORTH APARTMENTS, LTD.
2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

Francis Stolarski, Trustee
The GIS Irrevocable Trust
4242 Lomo Alto N-65
Dallas, Texas 75219

Dear Francis:

Wadsworth Apartments, Ltd. (the "**Owner**") is the owner of Oakwood Place Apartments (the "**Community**") which is located 495 Wadsworth Drive, Dallas, Texas 75216. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

The Owner is currently structured to include Hamichi Corp., a Texas corporation, the general partner and a State of Texas certified Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner desires to have this provision removed from its contract and, therefore, is requesting the Department's approval to remove the ongoing requirement for HUB participation from its contract.

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **Wednesday, May 8, 2019 at 4:30 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

WADSWORTH APARTMENTS LTD.
a Texas limited partnership

By: Hamishi Corp.,
a Texas corporation,
its general partner



By: _____
Alex Stolarski, President

WADSWORTH APARTMENTS, LTD.
2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

Francis Stolarski, Trustee
The DJS Irrevocable Trust
4242 Lomo Alto N-65
Dallas, Texas 75219

Dear Francis:

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In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **Wednesday, May 8, 2019 at 4:30 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

WADSWORTH APARTMENTS LTD.
a Texas limited partnership

By: Hamishi Corp.,
a Texas corporation,
its general partner



By: _____
Alex Stolarski, President

WADSWORTH APARTMENTS, LTD.
2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

Daniel Emerson
Jones Lang LaSalle Multifamily, LLC
2141 Rosecrans Avenue, Suite 6100
El Segundo, CA 90245

Dear Daniel:

Wadsworth Apartments, Ltd. (the "**Owner**") is the owner of Oakwood Place Apartments (the "**Community**") which is located 495 Wadsworth Drive, Dallas, Texas 75216. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

The Owner is currently structured to include Hamichi Corp., a Texas corporation, the general partner and a State of Texas certified Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner desires to have this provision removed from its contract and, therefore, is requesting the Department's approval to remove the ongoing requirement for HUB participation from its contract.

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In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **Wednesday, May 8, 2019 at 4:30 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

WADSWORTH APARTMENTS LTD.
a Texas limited partnership

By: Hamishi Corp.,
a Texas corporation,
its general partner



By:

Alex Stolarski, President

EXHIBIT A

HAMISHI CORP.
2010 Estrada Parkway
Irving, Texas 75061

May 3, 2019

Ms. Lee Ann Chance
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 99001- Oakwood Place Apartments (the "**Property**")

Dear Ms. Chance:

The undersigned, Hamishi Corp. ("**Hamishi**") serves as the general partner of Wadsworth Apartments, Ltd., a Texas limited partnership (the "**Owner**"), the owner of the Property. The Property's Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits ("**LURA**") requires the ongoing material participation of a historically underutilized business ("**HUB**"), and Hamishi has been fulfilling that requirement since the Property was awarded tax credits. Hamishi has determined that it is in its best economic interest to retire as the HUB in anticipation of a potential sale of the Property. Hamishi's decision to exit the ownership is an action of its own volition and its participation in the development and operation of the Property has been and will continue to be substantive and meaningful until the conclusion of the sale of the Property.

Hamishi is respectfully requesting TDHCA's approval to remove the ongoing HUB requirement from the LURA to facilitate a potential sale of the Property.

Sincerely,

Hamishi Corp.,
a Texas corporation

By:



Alex Stolarski, President

Oakwood Place Apartments

Public Hearing at the Community Management Office

Date May 8th, 2019

Name: *JoAnn Thompson* Apt# *1012* Phone # *214-881-0443*

Name: *Lakesha Jones* Apt# *1071* Phone # *972-674-7996*

Name: *Valerie D. Brown* Apt# *2014* Phone # *(214) 758-9046*

Name: *[Signature]* Apt# *2016* Phone # _____

Name: _____ Apt# _____ Phone # _____

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Name: _____ Apt# _____ Phone # _____

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Minutes of the meeting of Residents of Oakwood Place Apartments which is owned by Wadsworth Apartments, LTD. With the representatives of Oakwood Place Apartments held at 4:30 PM on Wednesday May 8, 2019

Location of the meeting:

The Community's Management Office

Objective of the Meeting:

To discuss and answer questions regarding:

- a. The amendment request to remove the requirement of a HUB to participate in the ownership of the community
- b. Explanation the mechanics of the ROFR (right of first refusal) stating that if the property is sold, it will first offer to a qualified nonprofit or to a tenant organization a right of first refusal to purchase the project at the pre-specified price requirements.

In Attendance:

For Oakwood Place:

Emiliana Godinez-(Manager)

Lisa Perales-(Assistant Manager)

Alex Stolarski, of Wadsworth Apartments, LTD. (via speaker phone).

Residents:

JoAnn Thompson

Tanya Wilson

Lakesha Jones

Valerie Brown

Latonya Kelly

Process:

The representatives of Oakwood explained the proposed change, as well as the fact that it would not have an effect on their tenancy. After this, the floor was opened for questions.

There were no resident questions

Meeting Adjourned at 4:55

11

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action regarding a Placed in Service deadline extension for a development located in a Major Disaster Area for Gala at Four Corners (HTC #16246)

RECOMMENDED ACTION

WHEREAS, Gala at Four Corners, LP (the Development Owner or Owner) was allocated \$1,064,996 in 9% Housing Tax Credits (HTCs) in 2016 for Gala at Four Corners (the Development), a development consisting of 90 new multifamily units for elderly households in Sugar Land, Fort Bend County;

WHEREAS, the Development Owner is required by the Carryover Allocation Agreement to place all Units in service no later than December 31, 2018, and required by Internal Revenue Code §42(h)(1) to place each building in service by no later than December 31, 2018;

WHEREAS, IRS Revenue Procedure 2014-49 allows for and the Development Owner is requesting an extension to the placed-in-service (PIS) deadline because the buildings are located in and impacted by a Major Disaster Area, as declared by the President, during the two-year period described in §42(h)(1)(E)(i) as long as the Development Owner plans to place the Development in service no later than December 31 of the year following the end of the two-year period;

WHEREAS, on August 25, 2017, under FEMA-4332-DR, initial notice was given that the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act due to excessive rain, wind and flooding that included Fort Bend County in a list of Texas counties eligible to receive individual and/or public assistance;

WHEREAS, on October 12, 2017, the Department's board approved a three-month extension to the original PIS deadline for the Development, from December 31, 2018, to March 31, 2019, with the further authorization of the Executive Director to grant an additional three-month extension to the deadline, if warranted;

WHEREAS, on February 13, 2019, the Acting Director approved a subsequent three-month extension to the PIS deadline for the Development to June 30, 2019;

WHEREAS, the Owner has indicated that the Development has continued to incur significant construction delays related to inclement weather in the area and is requesting relief under IRS Revenue Procedure 2014-49 in the form of an additional 60-day extension, from June 30, 2019, to August 29, 2019, to the Development's PIS deadline;

WHEREAS, aside from delaying the availability of affordable units, the requested change does not negatively affect the Development or impact the long term viability of the transaction, and the requested relief is commensurate with the delay which occurred and does not exceed the relief period specified in IRS Revenue Procedure 2014-49; and

WHEREAS, under 10 TAC §10.405(c), staff has determined that Board approval is warranted based on the extenuating circumstances in the Owner's request;

NOW, therefore, it is hereby

RESOLVED, that the requested extension of the PIS deadline to August 29, 2019, is hereby approved, and the Acting Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Gala at Four Corners was approved for a 9% Housing Tax Credit (HTC) award in 2016. The Development is a 90-unit, new construction, property located in southwest Houston near Sugar Land, Fort Bend County. The Development Owner, Gala at Four Corners, LP, and its General Partner, Gala at Four Corners GP, LLC, are ultimately controlled by Mark Gardner of Gardner Capital and Laolu Yemitan.

On September 19, 2017, the Development Owner submitted to the Department a letter requesting a six-month extension to the date that the Development Owner is required to place each building in service in accordance with IRC §42(h)(1) and the Development's Carryover Allocation Agreement. The Development Owner sought the relief under IRS Revenue Procedure 2014-49 relating to Owners of low-income buildings and housing credit agencies of States in Major Disaster Areas declared by the President.

The Department verified that Fort Bend County was included in the list of designated counties eligible for assistance under FEMA Notice of Major Disaster Declaration (DR-4332) declared on August 25, 2017, due to damage in the State of Texas from Hurricane Harvey resulting from severe flooding, storm surge, and damaging winds from the period of August 23, 2017, through September 15, 2017.

On October 12, 2017, the Department board approved a three-month extension to the original PIS deadline to March 31, 2019, with the further authorization of the Executive Director to grant an additional three-month extension to the PIS deadline, if warranted. On February 13, 2019, the Acting Director approved a subsequent three-month extension to the PIS deadline to June 30, 2019.

The Development began construction in December 2017, and construction was initially anticipated to be completed in March 2019. However, in addition to the impact of Hurricane Harvey, severe weather persisted through 2018. The Owner provided Proclamations from Governor Abbott dated October 30, 2018, and November 4, 2018, stating that the state of disaster continues to exist in Texas counties (including Fort Bend County) as a result of catastrophic damage caused by Hurricane Harvey and severe weather that continued through 2018.

The latest Construction Status Report submitted to the Department on June 6, 2019, reports that construction is progressing slower than expected due to continued rainfall and muddy conditions. As of April 30, 2019, construction is approximately 91% complete. The construction inspection report also states that the current deadline of June 30, 2019, will likely be met with a Temporary Certificate of Occupancy (TCO), but final completion will not occur until August or September.

On May 17, 2019, the Owner submitted to the Department a letter requesting an additional 60-day extension to the date that the Owner is required to place each building in service. The Owner states that substantive delays in construction continue due to persistent rainfall events in the area. In addition, construction progress has been continually impeded by the labor supply from critical path subcontractors on the project, such as the electrical subcontractor, HVAC subcontractor, and trim subcontractor. Construction progress has been also been impeded by insufficient labor forces provided by the subcontracting companies, which is directly caused by the very active construction market in the Houston area post-Hurricane Harvey. The Owner has instructed the General Contractor to execute change orders for increased and overtime labor from all critical subcontracting companies. The Owner believes that, with the increased and overtime labor, the August 29, 2019, requested PIS deadline will be met.

In accordance with IRS Revenue Procedure 2014-49, Section 6.03, as an Owner affected by a Presidentially declared disaster, the Owner is requesting the Department's approval for the carryover allocation relief. The agency, as directed by the Procedure, may approve such relief only for projects whose Owners cannot reasonably satisfy the deadlines of §42(h)(1)(E) because of an event or series of events that led to a major disaster declaration under the Stafford Act. The agency's determination may be made on an individual project basis or the agency may determine, because of the extent of the damage in a major disaster area, that all Owners or a certain group of Owners in the Major Disaster Area warrant the relief.

Staff believes that the severe weather and heavy rains, which have continued through 2018 and early 2019, affected the construction progress of this Development, and construction was further delayed by the impact of Hurricane Harvey in the construction market in the Houston area.

Extension requests are normally considered under the Uniform Multifamily Rules, Subchapter E, 10 TAC §10.405(c); however, extensions are only considered in this section if the original deadline associated with Carryover, the 10% Test, construction status reports, or cost certification requirements will not be met. The provisions in the Rule do not specifically address extensions to the placed in service deadline. The IRS, however, provides for the subject disaster related extension. Staff has the

ability, in accordance with provisions in 10 TAC §10.405(c), to bring to the Board material determinations that warrant Board approval due to extraordinary circumstances such as those discussed above.

Staff recommends approval of the third extension to the placed-in-service deadline for the Development, from June 30, 2019, to August 29, 2019, as presented herein.



May 17, 2019

TDHCA
221 E. 11th Street
Austin, TX 78701

Re: Gala at Four Corners (TDHCA #16246) – placed-in-service extension request

On behalf of the Owner/ Developer for Gala at Four Corners (the “Development”), I am writing to inform TDHCA that the Development has continued to experience significant delays in construction as initially projected by the Applicant in the original request letter dated September 17, 2017, and reaffirmed in the second request letter dated November 19, 2018. This letter serves as notice to TDHCA that the delays reported by the Applicant in both instances have continued to be substantive into the 2019 calendar year. This letter also serves to provide TDHCA specific instances of delays incurred since the submission of the second request letter dated November 19, 2018, and the specific proactive measures the Applicant must take to mitigate these delays. Proclamations from the Office of the Governor dated March 15, 2019, and April 12, 2019, further detail the case that the state of disaster continues to exist in those Counties. The Applicant is requesting to extend the placed-in-service by an additional 60 days.

In the time that has transpired since the most recent request letter was submitted by the Applicant, the construction of the Development has incurred delays related to subcontractor labor force. Construction progress has been continually impeded by the labor supply from critical path subcontractors on the project such as the electrical subcontractor, HVAC subcontractor, trim subcontractor, and low voltage subcontractor. We have experienced insufficient labor forces provided by the subcontracting companies directly caused by the very active construction market in the Houston metroplex post-Harvey. The subcontracting companies are not able to provide “coverage” in terms of manpower to satisfy the large number of contracts they are engaged in, and in some instances, are allocating the most resources towards larger contracts. Generally speaking, manpower provided by the electrical and HVAC subcontractor have caused the most substantive delays – delaying insulation installation, sheetrock installation, and permanent power connection to buildings. However, currently, the most critical delays are being incurred from the low voltage subcontractor and trim subcontractor, whose prolonged installation and completion of fire suppression systems and life safety hardware are impeding the development from obtaining authorization to occupy from local authorities. Crews across these trades over the past couple of months have typically provided half of the coverage identified by the General Contractor as needed to meet schedule.

To further exacerbate the construction delays concerning subcontractor resources to the Development has been the atypical amounts of rain events the Houston metroplex has received during the winter months. Currently, we have executed agreements with critical subcontractors to allocate more resources to the project and have a dedicated path to achieve Placed in Service before the end of this extension. The Applicant has instructed the General Contractor to execute change orders for increased and overtime labor from all critical subcontracting companies. The Applicant has also instructed the General Contractor



to supplement labor where necessary, particularly in the area of low voltage systems and life safety hardware install.

We are confident that through the continual use of agreements with subcontracting companies for increased and overtime labor, and supplementing labor on the project from third party contractors, the Project will be delivered before August 29, 2019. The assumptions for that time frame are grounded in the Applicant's continued in-depth observations of construction progress on the site, specifically regarding the following variables: delivery of materials, allocation of labor, and time span from installation of sheet rock in buildings to the delivery of units.

With such considerations in mind, please consider this a request to extend the placed-in-service deadline to August 29, 2019.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brennan Sanders', with a stylized, cursive script.

Brennan Sanders



May 17, 2019

Memorandum

Gala at Four Corners, LP
4803 S National, Suite 200
Springfield, MO 65810

Re: Gala at Four Corners (TDHCA #16246) – placed-in-service extension request

To Whom It May Concern:

Cross Architects is the Architect of Record for Gala at Four Corners. As such, I am writing to affirm the continual occurrence of construction delays on the Development related to subcontractor labor force on the project which have been compounded by continual, substantial rainfall events.

I concur with Developer's conclusion that the very active construction market in the Houston Metroplex post-Harvey has created an environment in which the subcontracting companies in the region are not able to provide "coverage" in terms of manpower to satisfy the large number of contracts they are engaged in, and in some instances, are allocating the most resources towards larger contracts. These effects have continued to be seen into the 2019 calendar year.

The Developer has acted proactively to address labor issues, however, the effects have persisted, as they are reasonably out of the Developer's control. We are in agreement with the Developer that a 60-day extension is needed and will be a sufficient amount of time to finish the project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Everett".

Adam Everett,
Cross Architects, PLLC




GOVERNOR GREG ABBOTT

October 30, 2018

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:00pm O'CLOCK

The Honorable Rolando B. Pablos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

OCT 30 2018

Secretary of State

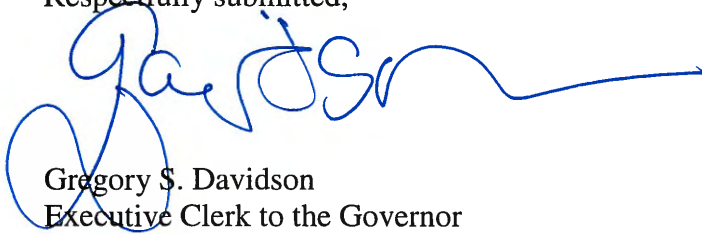
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation certifying that the severe weather and flooding event that began on September 10, 2018, has caused or may cause widespread and severe property damage in a number of Texas counties.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,



Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe weather and flooding event that began on September 10, 2018, has caused or may cause widespread and severe property damage in Aransas, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bexar, Blanco, Brazoria, Brazos, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Chambers, Coleman, Colorado, Comal, Comanche, DeWitt, Dimmit, Duval, Eastland, Edwards, Ellis, Erath, Fannin, Fayette, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Harris, Haskell, Hays, Hidalgo, Hill, Hood, Hopkins, Houston, Jackson, Jim Hogg, Jim Wells, Jones, Karnes, Kenedy, Kendall, Kerr, Kimble, Kinney, Kleberg, Knox, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Live Oak, Llano, Madison, Mason, Matagorda, Maverick, McMullen, Medina, Mills, Montgomery, Nolan, Nueces, Palo Pinto, Parker, Polk, Real, Refugio, San Jacinto, San Patricio, San Saba, Shackelford, Somervell, Starr, Stephens, Sutton, Tarrant, Taylor, Throckmorton, Travis, Trinity, Uvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala counties.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 30th day of October, 2018.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:00 PM O'CLOCK

OCT 30 2018

ATTESTED BY:



ROLANDO B. PABLOS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3:00 PM O'CLOCK
OCT 30 2018




GOVERNOR GREG ABBOTT

November 4, 2018

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:30AM O'CLOCK

The Honorable Rolando B. Pablos
Secretary of State
State Capitol Room 1E.8
Austin, Texas 78701

NOV 04 2018

Secretary of State

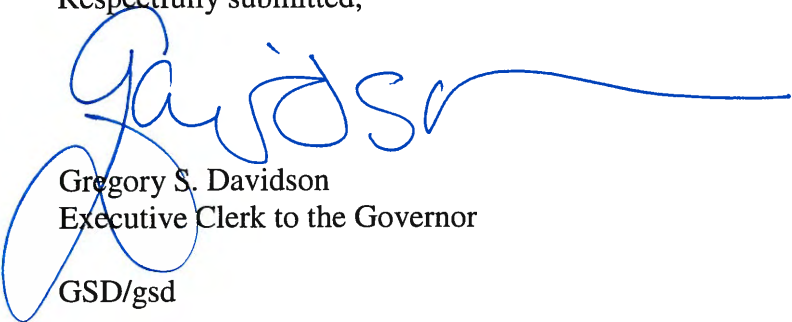
Dear Mr. Secretary:

Pursuant to his powers as Governor of the State of Texas, Greg Abbott has issued the following:

A proclamation stating that a state of disaster continues to exist in Texas as a result of catastrophic damage caused by Hurricane Harvey in Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Guadalupe, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kerr, Kleberg, Lavaca, Lee, Leon, Liberty, Live Oak, Madison, Matagorda, Milam, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Patricio, San Augustine, San Jacinto, Trinity, Tyler, Victoria, Walker, Waller, Washington, Wharton, Willacy, and Wilson Counties.

The original proclamation is attached to this letter of transmittal.

Respectfully submitted,


Gregory S. Davidson
Executive Clerk to the Governor

GSD/gsd

Attachment

PROCLAMATION

BY THE

Governor of the State of Texas

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28 and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for the 60 counties listed above.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.



IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 4th day of November, 2018.

A handwritten signature in black ink that reads "Greg Abbott".

GREG ABBOTT
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:30AM O'CLOCK

NOV 04 2018

ATTESTED BY:



ROLANDO B. PABLOS
Secretary of State

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:30 AM O'CLOCK

NOV 04 2018

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BOARD ACTION REQUEST

COMPLIANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, and an order adopting new Subchapter H, Income and Rent Limits, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, at the meeting of April 25, 2019, the Board approved the proposed repeal and new rule regarding income and rent limits for publication in the *Texas Register*;

WHEREAS, the public comment period was from May 10, 2019 to June 10, 2019 and no comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, and adoption of new Subchapter H, Income and Rent Limits, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

At the meeting of April 25, 2019, the Board approved the repeal of the current rule regarding income and rent limits and a proposed new rule to be published in the *Texas Register* for public comment. No comment was received.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Cervantes has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous readoption making changes to the rule governing income and rent limits.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing rule for Income and Rent Limits.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between May 10, 2019, and June 10, 2019. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on June 27, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits

Attachment 2: Preamble for adopting new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits without change to the proposed text as published in the May 10, 2019, issue of the *Texas Register* (44 TexReg 2342). The purpose of the new rule is to make changes to add two new programs - the Tax Credit Assistance Program Repayment Funds (TCAP RF) and National Housing Trust Fund (NHTF) - and to address changes in IRC §42, to provide income and rent limits at 20%, 30%, 40%, 50%, 60%, 70% and 80% of Area Median Gross Income for the Housing Tax Credit program, as well as make other non-substantive administrative corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule governing income and rent limits.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.123.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule provides specific detail on how income and rent limits will be applied for a variety of federal programs. Other than in the case of a small or micro-business that participates in one of these programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in a program, the rule provides a clear set of regulations for the handling of income and rent limits.

3. The Department has determined that because this rule defines how income and rent limits are established there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule only defines how rent and income limits are established by the department; therefore, no local employment impact statement is required to be prepared for the rule. Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule only defines how income and rent limits are established by the Department there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an [updated and more germane rule]. There [will not be] any economic cost to any individuals required to comply with the new section [because the processes described by the rule have already been in place through the rule found at this section being repealed].

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only relates to how the Department established income and rent limits.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between May 10, 2019, and June 10, 2019. No comments were received regarding the new rule.

The Board adopted the final order adopting the new rule on June 27, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§10.1001.Purpose.

The purpose of this subchapter is to codify the income and rent limits applicable to the multifamily programs administered by the Texas Department of Housing and Community Affairs (the Department). The Department may, but is not required to, calculate and provide income and rent limits for programs administered by the Department. Income and rent limits will be derived from data released by Federal agencies including the U.S. Department of Housing and Urban Development (HUD).

§10.1002.Definitions.

(a) Unless otherwise defined here, terms have the meaning in §11.1 of this title (relating to Definitions), or federal or state law.

(b) Multifamily Tax Subsidy Program Imputed Income Limit--Using the income limits provided by HUD pursuant to §142(d), the imputed income limit is the income limitation which would apply to individuals occupying the unit if the number of individuals occupying the unit were as described in paragraphs (1) and (2) of this subsection:

(1) in the case of a unit which does not have a separate bedroom, 1 individual; or

(2) in the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom.

(c) Tax Credit Assistance Program (TCAP)--Funds awarded as part of the American Recovery and Reinvestment Act to assist Low Income Housing Tax Credit projects funded during 2007, 2008, and 2009.

(d) Tax Credit Assistance Program Repayment Funds (TCAP RF)--Multifamily Direct Loan funds made available through income generated from loan repayments from the Tax Credit Assistance Program.

§10.1003.Tax Exempt Bond Developments.

(a) Tax Exempt Bond Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50% and 60% Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50% and HERA Special 60% income limit by household size. These higher limits can only be used if at least one building in the Project was placed in service on or before December 31, 2008.

(b) If HUD releases a 20%, 30%, 40%, 60%, 70% or 80% income limit in the MTSP charts the Department will make that data available without any calculations. Otherwise, the following methodology will be used, without rounding, to determine additional income limits:

- (1) To calculate the 20% AMGI, the 50% AMGI limit will be multiplied by .40 or 40%.
- (2) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.
- (3) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.
- (4) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.
- (5) To calculate the 70% AMGI, the 50% AMGI limit will be multiplied by 1.4 or 140%.
- (6) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(c) The Land Use Restriction Agreement (LURA) for some, but not all, Tax Exempt Bond properties restricts the amount of rent the Development Owner is permitted to charge. If the LURA restricts rents, rent limits will be calculated in accordance with §10.1004(d) of this subchapter (relating to Housing Tax Credit Properties, TCAP, Exchange and HTF).

(d) Tax Exempt Bond LURAs are hereby amended to be consistent with this section.

(e) The Department will make available a memorandum in a recordable form reflecting the applicable rent limits in accordance with this section and the legal description of the affected property. The owner of the property will bear any costs associated with recording such memorandum in the real property records for the county in which the property is located.

(f) Nothing in this section prevents a Development Owner from pursuing a Material Amendment to their LURA in accordance with the procedures found in §10.405 of this chapter (relating to Amendments and Extensions).

§10.1004.Housing Tax Credit Properties, TCAP, Exchange and SHTF.

(a) Except for certain rural properties, Housing Tax Credit, TCAP, Exchange, and SHTF Developments must use the Multifamily Tax Subsidy Program (MTSP) income limits released by HUD, generally, on an annual basis. The MTSP limit tables include:

(1) The 50% and 60% Area Median Gross Income (AMGI) by household size.

(2) In areas where the income limits did not decrease in 2007 and 2008 because of HUD's hold harmless policy, a HERA Special 50% and HERA Special 60% income limit by household size. These higher limits can only be used if at least one building in the Project (as defined on line 8b on Form 8609) was placed in service on or before December 31, 2008.

(b) If HUD releases a 20%, 30%, 40%, 60%, 70% or 80% income limit in the MTSP charts, the Department will use that data. Otherwise, the following calculation will be used, without rounding, to determine additional income limits:

- (1) To calculate the 20% AMGI, the 50% AMGI limit will be multiplied by .40 or 40%.
- (2) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.
- (3) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.
- (4) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.
- (5) To calculate the 70% AMGI, the 50% AMGI limit will be multiplied by 1.4 or 140%.
- (6) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(c) Treatment of Rural Properties. Section 42(i)(8) of the Code permits certain Housing Tax Credit, Exchange, and Tax Credit Assistance properties to use the national non-metropolitan median income limit when the area median gross income limit for a place is less than the national non-metropolitan median income.

(1) The Department will identify rural eligible places in accordance with:

- (A) Section 520 of the Housing Act of 1949, as amended from time to time; and
- (B) Chapter 2306 of the Texas Government Code, as amended from time to time.

(2) The Department allows the use of rural income limits for SHTF multifamily rental Developments that are considered rural using the process described in this subsection.

(d) Rent limits are a calculation of income limits and cannot exceed 30% of the applicable Imputed Income Limit. Rent limits are published by number of bedrooms and will be rounded down to the nearest dollar.

(1) Example 1004(1): To calculate the 30% 1 bedroom rent limit:

(A) Determine the imputed income limited by multiplying the number of bedrooms by 1.5: 1 bedroom x 1.5 persons = 1.5.

(B) To calculate the 1.5 person income limit, average the 1 person and 2 person income limits: If the 1 person 30% income limit is \$12,000 and the 2 person 30% income limit is \$19,000, the imputed income limit would be \$15,500 ($\$12,000 + \$19,000 = \$31,000 / 2 = \$15,500$).

(C) To calculate the 30% 1 bedroom rent limit, multiply the imputed income limit of \$15,500 by 30%, then divide by 12 months and round down. In this example, the 30% 1 bedroom limit is \$387 ($\$15,500$ times 30% divided by 12 = \$387.50 per month. Rounded down the limit is \$387).

(2) Example 1004(2): to calculate the 50% 2 bedroom rent limit:

(A) Determine the imputed income limited to be calculated by multiplying the number of bedrooms by 1.5: 2 bedrooms x 1.5 persons = 3.

(B) The 3 person income limit is already published; for this example the applicable 3 person 50% income limit is \$27,000.

(C) To calculate the 50% 2 bedroom rent limit, multiply \$27,000 by 30%, then divide by 12. In this example, the 50% 2 bedroom limit is \$675 (\$27,000 times 30% divided by 12 = \$675. No rounding is needed since the calculation yields a whole number).

(e) The Department releases rent limits assuming that the gross rent floor is set by the date the Housing Tax Credits were allocated.

(1) For a 9% Housing Tax Credit, the allocation date is the date the Carryover Agreement is signed by the Department.

(2) For a 4% Housing Tax Credit, the allocation date is the date of the Determination Notice.

(3) For TCAP, the allocation date is the date the accompanied credit was allocated.

(4) For Exchange, the allocation date is the effective date of the Subaward agreement.

(f) Revenue Procedure 94-57 permits, but does not require, owners to set the gross rent floor to the limits that are in effect at the time the Project (as defined on line 8b on Form 8609) places in service. However, this election must be made prior to the Placed in Service Date. A Gross Rent Floor Election form is available on the Department's website. Unless otherwise elected, the initial date of allocation described in subsection (e) of this section will be used.

(1) In the event an owner elects to set the gross rent floor based on the income limits that are in effect at the time the Project places in service and wishes to revoke such election, prior approval from the Department is required. The request will be treated as non-material amendment, subject to the fee described in §11.901 of this title (relating to Fee Schedule) and the process described in §10.405 of this chapter (relating to Amendments and Extensions).

(2) An owner may request to change the election only once during the Compliance Period.

(g) For the SHTF program, the date the LURA is executed is the date that sets the gross rent floor.

(h) Held Harmless Policy.

(1) In accordance with Section 3009 of the Housing and Economic Recovery Act of 2008, once a Project (as defined on line 8b on Form 8609) places in service, the income limits shall not be less than those in effect in the preceding year.

(2) Unless other guidance is received from the U.S. Treasury Department, in the event that a place no longer qualifies as rural, a Project that was placed in service prior to loss of rural designation can continue to use the rural income limits that were in effect before the place lost such designation for the purposes of determining the applicable income and rent limit. However, if in any subsequent year the rural income limits increase, the existing project cannot use the increased rural limits. Example 1004(3): Project A was placed in service in 2010. At that time, the place was classified as Rural. In 2012 that place lost its rural designation. The rural income limits increased in 2013. Project A can continue to use the rural income limits in effect in 2012 but cannot use the higher 2013 rural income limits. For owners that execute a carryover for a Project located in a rural place that loses such designation prior to the placed in service date, unless other guidance is received from the U.S. Treasury Department, the Department will monitor using the rent limits calculated from the rural limits that were in effect at the time of the carryover. However, for the purposes of determining household eligibility, such Project must use the applicable MTSP income limits published by HUD.

§10.1005.HOME, TCAP RF, and NSP.

(a) HOME and TCAP RF Developments must use the HOME Program Income and Rent Limits that are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State.

(1) Upon publication, the Department will determine which counties are in each MSA, PMSA, Area or District.

(2) Generally, PDR publishes income limits in tables identifying the following Area Median Gross Income (AMGI) by household size:

(A) Extremely Low-Income Limits which are generally 30% of median income, which will be shown as the 30% limit in the Department's income limits;

(B) Very Low-Income Limits which are generally 50% of median income, which will be shown as the 50% limit in the Department's income limits;

(C) 60% Limits;

(D) Low-Income Limits which are generally 80% of the median income, but capped at the national median income with some exceptions which will be shown as the 80% limits in the Department's income limits.

(3) If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by PDR:

(A) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(B) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(C) To calculate the 60% AMGI, the 50% AMGI limit will be multiplied by 1.2 or 120%.

(b) PDR publishes High and Low HOME rent limits by bedroom size.

(c) PDR does not publish a 30% or 40% rent limits that certain HOME and TCAP RF Developments are required to use. These limits will be calculated using the same formulas described in §10.1004 of this subchapter (relating to Housing Tax Credit Properties, TCAP, Exchange and SHTF).

(d) In the event that PDR publishes rent limits after the HOME program income limits, the Department permits HOME and TCAP RF Developments to delay the implementation of the 30% and 40% rent limits until the High and Low HOME rent limits must be used.

(e) NSP income limits are published annually by HUD for each county with tables identifying the 50% AMGI and 120% AMGI for household size. If not published, the Department will use the following methodology to calculate, without rounding, additional income limits from the HOME Program income limits released by HUD:

(1) To calculate the 30% AMGI, the 50% AMGI limit will be multiplied by .60 or 60%.

(2) To calculate the 40% AMGI, the 50% AMGI limit will be multiplied by .80 or 80%.

(3) To calculate the 60% AMGI, the 50%AMGI limit will be multiplied by 1.2 or 120%.

(4) To calculate the 80% AMGI, the 50% AMGI limit will be multiplied by 1.6 or 160%.

(f) If the LURA for an NSP Development restricts rents, the amount of rent the Development Owner is permitted to charge will be the High or Low HOME rent published by PDR or calculated in the same manner described in §10.1004 of this subchapter using the HOME income limits.

§10.1006. National Housing Trust Fund (NHTF).

(a) The 30% National Housing Trust Fund Income and Rent Limits are calculated annually by HUD's Office of Policy Development and Research (PDR). The limits are made available for each Metropolitan Statistical Areas (MSA), Primary Metropolitan Statistical Areas (PMSA) and Area, District or County by State. Generally, PDR publishes income limits in tables identifying the Area Median Gross Income (AMGI) by household size. The 30% NHTF income limit is the greater of the 30% limit and the federal poverty line. The 15% NHTF income limit will be half of the 30% NHTF income limit.

(b) PDR publishes 30% NHTF Rent Limits by bedroom size. The 30% NHTF rent limit is calculated based on the greater of the 30% AMGI or the federal poverty line. The 15% NHTF rent limit will be half of the 30% NHTF rent limit.

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BOARD ACTION REQUEST

EXECUTIVE

JUNE 27, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.24, Protected Health Information; and an order adopting new 10 TAC §1.24, Information Security and Privacy Requirements; and directing their publication in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053 the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, various state and federal laws require the Department to provide for the security and privacy of information provided to the Department by individuals;

WHEREAS, pursuant to Tex. Gov't Code §2001.039 state agencies are required to review a rule every four years to assess whether the reasons for initially adopting the rule continue to exist and based on the assessment of the rule determine if the rule should be readopted as is, readopted with amendments, or repealed;

WHEREAS, 10 TAC §1.24, Protected Health Information, warrants expansion beyond only protected health information to other non-health protected information, and requires a more detailed definition of the duties and responsibilities of contractors who handle that protected information on behalf of the Department;

WHEREAS, 10 TAC §1.24 will be newly titled: "Information Security and Privacy Requirements," and will address all types of protected information that the Department encounters, and set forth specific requirements of contractors for the protection of such information; and

WHEREAS, the proposed actions on this rule were published in the Texas Register and made available for public comment from May 10, 2019, to June 10, 2019, and no formal comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adoption of the repeal of 10 TAC §1.24, Protected Health Information, and adoption of new 10 TAC §1.24, Information Security and Privacy Requirements, in the form presented to this meeting, to be published for adoption in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

Tex. Gov't Code §2306.053, authorizes the Department to adopt rules governing the administration of the Department and its programs. TDHCA collects and/or generates a variety of personal information that is subject to the protections of almost a dozen state and federal statutes and regulations. Therefore, protecting the security and privacy of personal information is a priority of the Department. The rule being adopted sets forth the technical and administrative requirements for information security and privacy that the Department will require of all of its contractors dealing with protected information.

Currently the Department's rule regarding this issue is limited to Protected Health Information. Other requirements are relayed via contractual agreements. Staff has determined that a more comprehensive approach to information security and privacy is needed in rule. This proposed rule has been thoroughly reviewed by the Department's Information Systems and Legal staff.

The proposed rule was published in the Texas Register for public comment and comment was accepted from May 10, 2019, to June 10, 2019. While no formal comment was received, one organization, Foundation Communities, did ask several questions about the Information Security and Privacy Agreement, which is the contract referenced in the rule that Contractors will have to execute. Their questions related both to the stand-alone nature of computers used at the Contractor site, and whether they needed to consult when disposing of devices that have connected to the Department's network. Their questions were responded to by the Department counsel and Director of Information Systems.

No changes to the rule are made in response to these questions from the proposed rule. The rule attached is shown in clean final form.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.24, Protected Health Information

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §1.24, Protected Health Information. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. David Cervantes, Acting Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the security of personal information.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor would the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will repeal an existing regulation, but is associated with the simultaneous readoption making changes to the existing rule for the security of personal information.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections would be elimination of an outdated rule while proposing a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held May 10, 2019, to June 10, 2019, to receive input on the proposed repeal. No comments were received.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed repeal affects no other code, article, or statute.

§1.24. Protected Health Information.

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §1.24, Information Security and Privacy Requirements

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, new 10 TAC §1.24, Information Security and Privacy Requirements. The purpose of the rule is to expand the rule beyond only protected health information to other non-health protected information, and to provide a more detailed definition of the duties and responsibilities of contractors who handle that protected information on behalf of the Department. The rule will be newly titled Information Security and Privacy Requirements, and addresses all types of protected information that the Department encounters, and sets forth specific requirements of contractors for the protection of such information.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under exception item (6) which provides for an exception when necessary to protect the health, safety, and welfare of the residents of this state. Through protection of private information, the welfare of residents is protected. No costs are associated with this proposed rule.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

David Cervantes, Acting Director, has determined that, for the first five years the rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to the rule governing the security of personal information.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand, or repeal an existing regulation but merely revises a rule.
7. The new rule does technically increase the number of individuals to whom this rule applies, as several new provisions are being specified; however, those Contractors subject to those provisions of the rule are already required to satisfy the state and federal regulations specified. This rule merely formalizes these requirements in one place, under rule, and provides the specific detail on the agreement required of Contractors reflecting their adherence to the requirements.
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule provides specific detail on the handling by Department Contractors of personal information. Contractors subject to those provisions of the rule are already required to satisfy the state and federal regulations specified. This rule merely formalizes these requirements in one place, under rule; and provides the specific detail on the agreement required of Contractors reflecting their adherence to the requirements. Other than in the case of a small or micro-business that participates as a Contractor in one of these programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate as a Contractor in a program, the requirements of the rule – already provided for in other state and federal regulations – will not require an onerous burden.

3. The Department has determined that because this rule relates only to a revision to a rule, and the rule changes do not specifically relate to geographic location or business size, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to requirements of existing and future Department Contractors and echoes state and federal regulations already in effect.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule is applicable to all properties statewide, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Contractors and improved assurance of the safety and security of personal information. There will be limited economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule are already applicable under other state and federal regulations.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as the implementation of this rule generates no fees, nor requires any cost.

PUBLIC COMMENT AND REASPONED RESPONSE. The public comment period was held from May 10, 2019, to June 10, 2019, to receive input on the proposed new rule. No comment was received and no changes are recommended to the rule.

§1.24. Information Security and Privacy Requirements.

(a) Purpose.

The purpose of this rule is to provide the mechanism by which the Department will ensure the security and privacy of Protected Information belonging to persons who do business with the Department and those they serve.

(b) Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Computing Device--Any computer, laptop, server, smart phone, or any other data processing device that is used to connect to the Department's network.

(3) Contractor--A third party, including, but not limited to, outside auditors and legal counsel, funding agencies, Vendors or Subrecipients, including any and of its Representatives that may gain access to Protected Information on account of a contract with the Department.

(4) Criminal History Records Information--For the purposes of Tex. Gov't Code Chapter 411, Subchapter F, information collected about a person by a Criminal Justice Agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system; or

(B) driving record information under Subchapter C, Chapter 521 Transportation Code.

(5) Department--The Texas Department of Housing and Community Affairs.

(6) Financial Statements of a Tax Credit Applicant--For purposes of Tex. Gov't Code §2306.6717(d)(Public Information and Hearings), a formal statement of the financial activities of a Low Income Housing Tax Credit Applicant, submitted to the Department as part of a Low Income Housing Tax Credit Application, including but not limited to, the balance sheet, income statement, cash flow statement or changes in equity.

(7) Information Resources--The procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(8) Information Security and Privacy Agreement (ISPA)--An agreement between the Department and a Contractor implementing information security and privacy requirements of the Department.

(9) Non-Public Personal Information--For purposes of the Graham-Leach-Bliley Act (15 USC §§6801-6809 and 6821-6827), and implementing regulations, personally identifiable financial information provided to the Department or any of its Contractors, resulting from any transaction with, or any service performed for a client or consumer, or otherwise obtained by the Department or its Contractors, unless the information is otherwise publically available.

(10) Personal Identifying Information--For purposes of TEX. BUS. & COM. CODE Chapter 521 (Unauthorized Use of Identifying Information), and any implementing regulations, information that alone or in conjunction with other information identifies an individual, including an individual's name, Social Security number, date of birth, or government-issued identification

number, mother's maiden name, unique biometric data including fingerprint, voice print, retina or iris image, unique electronic identification number, address, or routing code, and telecommunication access devices as defined by Tex. Penal Code §32.51.

(11) Personal or Business Financial Information--For purposes of Tex. Gov't Code §2306.039 (Open Meetings and Open Records), any personal or business financial information including, but not limited to, Social Security numbers, tax payer identification numbers, or bank account numbers submitted to the Department to receive a loan, grant, or other housing assistance by a housing sponsor, individual or family.

(12) Protected Health Information--For purposes of Tex. Health & Safety Code Chap. 181 (adopting definitions in 45 CFR §160.103), any information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, and that identifies the individual, or can be used to identify the individual.

(13) Protected Information--Protected Health Information, Personal Identifying Information, Sensitive Personal Information, Personal or Business Financial Information, Non-Public Personal Information, Financial Statement of a Tax Credit Applicant, WAP Applications and Participation Information, Criminal History Records Information, and Victims of Violence Information.

(14) Representative--Any officer, employee, contractor, subcontractor, member, director, advisor, partner, or agent of Vendor/Subrecipient, or any person serving in such a role, however titled or designated.

(15) Sensitive Personal Information--For purposes of TEX. BUS. & COM. CODE Chapter 521 (Unauthorized Use of Identifying Information), an individual's first name or first initial and last name in combination with any one or more of the following items if the name and items are not encrypted:

(A) Social Security number,

(B) driver's license or government-issued identification number,

(C) account or credit/debit card number in combination with any required security code, access code, or password that would permit access, or

(D) information that identifies or reveals an individual and the physical or mental health or condition of the individual, the provision of health care to the individual, or payment for the provision of health care to the individual.

(E) The term does not include publicly available information that is lawfully made publicly available.

(16) Subrecipient--An organization with whom the Department contracts, and entrusts to administer federal or state programs or funds, including but not limited to, units of local government, non-profit and for-profit corporations, administrators, community action agencies, collaborative applications, sub-grantees, developers, owners, land banks, participating mortgage lenders, and non-profit owner-builder housing providers. This also includes an Affiliate of a Subrecipient.

(17) Vendor--A person or organization that supplies goods or services, properly procured under relevant laws, to the Department.

(18) Victims of Violence Information--Any information submitted to a covered housing provider, including the Department and its Contractors pursuant to 24 CFR §5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking. Also included pursuant to Tex. Gov't Code §552.138 is information regarding the location or physical layout, an employee, volunteer, former or current client, or the provision of services to a former

or current client, a private donor, or a member of a board of directors or board of trustees of a family violence shelter center, victims of trafficking shelter center, or sexual assault program.

(19) WAP Applications and Participation Information--For purposes of Weatherization Program Notice 10-08, U.S. Department of Energy, issued February 1, 2010, regarding the Department of Energy Weatherization Assistance Program (WAP), any specifically identifying information related to an individual's eligibility application for WAP or the individual's participation in WAP, such as name, address, or income information.

(c) Applicability and Implementation.

(1) This rule applies to Contractors as defined in subsection (b)(3) of this section. This rule is not applicable to third parties that contract with the Department but have no access to Department Protected Information.

(2) Contractors with Department contracts that are active on the effective date of this rule shall have 180 calendar days from the effective date of this rule to enter into an ISPA with the Department. Contractors that execute new Department contracts or contract renewals on or after the effective date of this rule shall enter into an ISPA with the Department no later than the date of contract execution, if an ISPA with the Department is not already in place. The ISPA shall be in a form provided by the Department on its website. A Contractor must download, execute and return the contract according to instructions on the website. A Contractor need only execute one ISPA, even if they participate with the Department in multiple programs or activities.

(3) The ISPA shall be effective with respect to all current and future contracts that Contractor has or will have with the Department for as long as the Contractor has access to Protected Information. Contractors receiving awards or contracts after the effective date of this rule must have an executed ISP Agreement on file with the Department or enter into an ISP Agreement before work can begin on the new award or contract.

(4) Contractor and Department may agree to eliminate or reduce access to, or the generation of, any class of Protected Information related to Contractor's obligations to the Department, provided it does not impair Contractor's ability to fulfill its obligations to the Department.

(5) Contractor shall accept responsibility for all Representatives and ensure the safeguarding of Protected Information in accordance with applicable federal and state laws, and the terms and conditions set forth in the ISPA.

(6) The Department may, in its sole discretion, require Contractor to amend an ISPA in order to conform to state and/or federal law.

(d) ISPA Security Measures. The ISPA shall include, among other requirements:

- (1) Security measures for devices that connect to the Department network, and
- (2) Security measures for maintenance of Department information external to the Department network, including, but not limited to:
 - (A) Maintaining an inventory of all information technology (IT) assets;
 - (B) Implementing and maintaining a risk management program;
 - (C) Ensuring information is recoverable in accordance with risk management decisions;
 - (D) Adhering to monitoring techniques for detecting, reporting, and investigating security incidents;
 - (E) Providing IT security training to employees;
 - (F) Conducting criminal background checks on employees with access to department information;

- (G) Separating development and production environments;
 - (H) Following a software change control process;
 - (I) Maintaining and following an IT security policy that has been approved by the department;
- and
- (J) Implementing other requirements reasonably necessary to ensure the security and privacy of Protected Information in the Contractor's possession or control.

(e) Breach.

In the event of an actual or suspected breach involving Department Private Information stored by the Contractor, Contractor shall promptly notify the Department no later than twenty-four hours after discovery of the incident. The Contractor will coordinate and cooperate fully with the Department in making all breach notifications and taking all actions required by law to effect the required notifications.

(f) Texas Public Information Act. If Contractor receives a request pursuant to the Texas Public Information Act for Information maintained by Contractor on account of a contract with TDHCA, Contractor shall notify the Department within three calendar days of the receipt of the request by forwarding the request to open.records@tdhca.state.tx.us

(g) Department Review. Contractor and Representatives shall permit Department to conduct periodic IT general controls audits, Internet security scans, and internal network vulnerability assessments, and contract monitoring audits at reasonable times, and upon reasonable notice. Such reviews may be conducted by the Department, the Texas State Auditor's Office, the Texas Department of Information Resources, an applicable federal oversight agency, or any third parties under contract with one of these agencies.

10

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on an order adopting an amendment, with changes, to 10 TAC, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries, and directing publication in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, in April 2019 the Board approved a proposed amendment to 10 TAC §1.410, Determination of Alien Status for Program Beneficiaries, to clarify that the documentation which is required of Subrecipients in the handling of client information in meeting the requirements of 10 TAC §1.410, must specifically be the documentation referenced in a list released by the Department; and

WHEREAS, the proposed amendment was submitted to the Texas Register for public comment which was accepted from May 10, 2019, through June 10, 2019, and one comment was received;

NOW, therefore, it is hereby

RESOLVED, that the amendment to 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries, is adopted for publication in the Texas Register; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendment to 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries, in the form presented to this meeting, to be published in the Texas Register, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), provides that an alien who is not a qualified alien is not eligible for any federal public

benefit. The U.S. Department of Justice (DOJ) provided guidance that each federal agency is required to identify which of their programs are considered federal public benefits for this purpose. That determination is not in the purview of the State of Texas. For the federal programs for which such guidance has been given, the Department has provided 10 TAC §1.410, Determination of Alien Status for Program Beneficiaries. The two largest programs of the Department that require such verification are the Low Income Home Energy Assistance Program (LIHEAP) and Department of Energy Weatherization Assistance Program (DOE-WAP). As of this time, all subrecipients in those programs have elected to comply with the federal requirement by determining eligible status of applicants and household members via the Systematic Alien Verification for Entitlements (SAVE) system. To assist Subrecipients in performing that status determination, the Department has generated a list of acceptable documentation for establishing United States Citizenship and Identity. While that list has been provided to Subrecipients the rule does not require that the list, and only those items on the list, are the only acceptable evidence. The rule amendment clarifies this.

This amendment to the rule was published in the Texas Register for public comment. One comment was received. The rule attached shows the final rule version with blackline of new revisions made in response to public comment.

Attachment 1: Preamble for adopting amendment to 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, an amendment to 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries. The purpose of the amendment is to clarify that acceptable documentation for establishing United States citizenship and identity may only be those documents determined as acceptable, and published by, the Department. The Department has released such a list, but the rule does not require that the list is the only acceptable documentation to be utilized.

Tex. Gov't Code §2001.0045(b) does not apply to the new rule because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. Compliance with the new rule is intended to ensure adherence to federal law, Tex. Gov't Code Chapter 2306, Subchapter E, and provide for the implementation of this activity.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the amendment will be in effect:

1. The amendment does not create or eliminate a government program, but provides clarification that the only acceptable documentation for establishing legal status is the documentation determined acceptable by the Department.
2. The amendment does not reduce work load such that any existing employee positions can be eliminated nor does it increase work load such that any new employee positions are required.
3. The amendment does not require additional future legislative appropriations.
4. The amendment does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The amendment is not creating a new regulation.
6. The amendment will not expand or repeal an existing regulation, but formalizes the methods for establishing legal status as those determined as acceptable by the Department.
7. The amendment will neither increase nor decrease the number of individuals subject to the rule.
8. The amendment will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this amendment, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

1. The Department has evaluated this amendment and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
 3. The Department has determined that because this amendment is only applicable to nonprofits and local governments that are designated as community action agencies there will be no economic effect on small or micro-business or rural communities.
- c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amendment does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.
 - d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the amendment as to its possible effects on local economies and has determined that for the first five years the amendment will be in effect the amendment has no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the amendment.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this amendment merely provides guidance on how the acceptable documentation that existing subrecipients of the Department can use in verification of household eligibility, and that the rule is applied statewide, the amendment does not change issues affecting employment, there are no "probable" effects of the new rule on particular geographic regions.

- e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Mr. Cervantes has also determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amendment will be to clarify what the Department will accept in verification.
- f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.
- g. PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held May 10, 2019, to June 10, 2019, to receive input on the proposed amendment. Comment was received from one organization, the Texas Council on Family Violence (TCFV). All FOUR comments summarized below are from TCFV.

§1.410(a). Purpose

PUBLIC COMMENT: The commenter stated that: "Application and eligibility under PRWORA are complicated areas of law and there have been numerous updates and clarifications in these areas over the last two decades. TCFV recommends the Department reference some of the more recent updates from HUD that provide clarification regarding which programs do not fall under PRWORA, specifically the DOJ, HHS and HUD joint letter to recipients of federal

assistance on August 5, 2016 and the subsequent letter from the HUD Office of Special Needs Assistance Programs from August 16th, 2016 on The Personal Responsibility and Work Opportunity Act of 1996 and HUD's Homeless Assistance Programs. Further, TCFV recommends referencing HUD Memo regarding the eligibility of battered noncitizen self-petitioners for Financial Assistance Under Section 214 of the Housing and Community Development Act from December 15, 2016.

DEPARTMENT RESPONSE: The Department appreciates the thoughtful comment in this regard. This rule does not impact requirements under Section 214 of the Housing and Community Development Act. Department counsel has considered, and will continue to consider, the PRWORA updates referenced by TCFV when a program-specific case arises. As a result of this comment, the Department will also post PRWORA guidance on the Department's website for Emergency Solutions Grant Providers, and will include this subject in trainings. However, as this rule is intended to be applicable to all Department programs for which PRWORA applies (not only HUD funded programs), no rule change is suggested by staff.

§1.410(b)(3). Definition of Qualified Alien

PUBLIC COMMENT: Regarding the definition in the rule for Qualified Alien, the commenter stated that: "The reference to 8 U.S.C. 1641(b) is incomplete and does not capture qualified aliens who are battered immigrants. This group is included in 8 U.S.C 1641(c) Treatment of certain battered aliens as qualified aliens. To ensure that this group of vulnerable immigrants who have been determined to fall under the 'qualified' definition are not mistakenly denied assistance, TCFV urges the Department to include reference to 8 U.S.C 1641(c) in the definition of qualified alien."

DEPARTMENT RESPONSE: The Department agrees and makes this added citation in the rule.

§1.410(e). No Applicable Exemptions under PRWORA.

PUBLIC COMMENT: The commenter noted that: "It is important to note that those immigrants receiving certain types of relief as victims may not be immediately found in the SAVE system, however, they do hold a status that makes them a 'qualified' alien. Due to confidentiality provisions in the Violence Against Women Act (VAWA), the Department of Homeland Security does not enter persons with certain types of relief into SAVE until they receive work authorization however these individuals do meet the 'qualified' definition and are thus eligible for assistance. See NOTICE PIH 2017-02 (HA) issued by HUD on January 19th, 2017 which describes verification procedures for VAWA relief recipients in the SAVE system. TCFV recommends a caveat be included to (e) to address that additional steps may be needed to verify status / eligibility for immigrants for whom VAWA confidentiality protections apply. TCFV is happy to work with the Department to craft this caveat."

DEPARTMENT RESPONSE: The Department does not agree that a caveat is needed in (e). However, the Department will work to publish additions to the list of acceptable documents as further described in the reasoned response to 10 TAC §1.410(h).

§1.410(h) regarding Acceptable Documentation

PUBLIC COMMENT: The commenter requested that they have: "...the opportunity to review and provide feedback to this documentation list, consulting with national immigration experts, to ensure that it is inclusive of the lesser known documents that immigrant victims may possess to demonstrate eligibility."

DEPARTMENT RESPONSE: The list of acceptable documentation is available on the Department's website at <https://www.tdhca.state.tx.us/community-affairs/docs/SAVE-DocumentationMatrix.pdf>. The list is updated from time to time, at the guidance of Department counsel. The commenter is encouraged to review the list, and if the commenter has suggested additions to the list of acceptable documentation, they are encouraged to contact Gavin Reid, Community Affairs Manager of Planning and Training. The Department has made a slight amendment to the rule as a result of this comment.

- h. STATUTORY AUTHORITY. The amendment is adopted pursuant to TEX GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended section affects no other code, article, or statute.

§1.410 Determination of Alien Status for Program Beneficiaries

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b) or (c).

(4) State--The State of Texas or the Department, as indicated by context.

(5) Subrecipient--An entity that receives federal or state funds passed through the Department.

(6) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further described in this rule.

(d) Applicability for State Funds. The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Home Energy Assistance Program and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. If no such election is made by the deadline, the Subrecipient will no longer be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the Subrecipient to select an option by the deadline is good cause for nonrenewal of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(D) If no election is made by the deadline in paragraph (2) of this subsection, the Subrecipient will be provided notification under Tex. Gov't Code Chapter 2105 that the Department does not intend to renew the Contract with the Subrecipient at the end of the current Contract Term. The Subrecipient may have a right to request a hearing under Tex. Gov't Code Chapter 2105.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe a Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the Subrecipient. Nothing

in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

(h) A Subrecipient must establish that an individual is a U.S. Citizen, U.S. National, or Qualified Alien using the documents deemed acceptable by the Department, and which have been published on the Department's website. This information may be updated by the Department from time to time, and highly encourages Subrecipients or other concerned parties to contact the Department if revisions are suggested.

2a

TDHCA Outreach Activities, May-June

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Training	Emergency Solutions Grants Basics Webinar	May 22	N/A	HOME/ESG
Roundtable	2020 QAP Roundtable	May 22	Austin	Multifamily Finance
Public Hearing	Public hearing: Federal Fiscal Year 2020 LIHEAP State Plan	May 28	Austin	Community Affairs
Public Hearing	Public hearing: Federal Fiscal Year 2020-2021 CSBG State Application and Plan	May 28	Austin	Community Affairs
Public Hearing	Public hearing: Federal Fiscal Year 2020 LIHEAP Plan	May 28	Fort Worth	Community Affairs
Public Hearing	Public hearing: Federal Fiscal Year 2020-2021 CSBG State Application and Plan	May 28	Fort Worth	Community Affairs
Training	Guide to Procurement for ESG Webinar	May 29	N/A	HOME/ESG
Public Hearing	Public hearing: Federal Fiscal Year 2020 LIHEAP State Plan	May 29	Odessa	Community Affairs
Public Hearing	Public hearing: Federal Fiscal Year 2020-2021 CSBG State Application and Plan	May 29	Odessa	Community Affairs
Public Hearing	Public hearing: 2020 Draft Regional Allocation Formula	May 29	Austin	Housing Resource Center
Public Hearing	Public hearing: Federal Fiscal Year 2020 LIHEAP State Plan	May 30	Houston	Community Affairs
Public Hearing	Public hearing: Federal Fiscal Year 2020-2021 CSBG State Application and Plan	May 30	Houston	Community Affairs
Training	2019 ESG Application Guidance Webinar	May 31	N/A	HOME/ESG

Homebuyer Fair	The BCL of Texas NeighborWorks Home Buyer Fair	June 1	Austin	Homeownership
Training	Income Determination Training	June 6	Austin	Compliance
Training	ESG Match Guidance Webinar	June 6	N/A	HOME/ESG
Homebuyer Fair	21 st Annual Home Buyers Fair 2019	June 8	McAllen	Homeownership
Homebuyer Fair	Killeen Home Buyer Expo	June 15	Killeen	Homeownership
Meeting	Disability Advisory Workgroup	June 19	Austin	Housing Resource Center
Roundtable	Single Family Umbrella Rule Roundtable	June 20	Austin	Office of Colonia Initiatives
Homebuyer Fair	City of Fort Worth Housing Summit	June 22	Fort Worth	Homeownership
Homebuyer Fair	Avenue CDC First Time Homebuyer Fair	June 22	Houston	Homeownership
Roundtable	Single Family Umbrella Rule Roundtable	June 26	Balch Springs	Office of Colonia Initiatives

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Amy Young Barrier Removal

- Added 2019 Statewide Allocation Application to Access the Reservation System

Asset Management

- Posted Post Award Activities Manual and Cost Certification Application updated dateline (June 2019)
- Added Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application (Royal Gardens Mineral Wells, Reserve at Quebec)
- Added Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (Oakwood Place Apartments)

Bond Finance

- Added Bond Official Statements for 2018 Forestwood, 2019 Park Yellowstone (short-term), 2019 Park Yellowstone (M-TEMS)
- Added RMRB 2019A Official Statement

Communications:

- Revised and updated broken web links
- Coordinated National Homeownership Month related content and web announcement headers and icons

Community Affairs

- Posted revised Income Calculator for WAP, CEAP and CSBG
- Posted updated Master List of Community Affairs Subrecipients
- Posted CSBG Budget Form Webinar and related materials
- Added link for CSBG Organizational Standards (Organizational Standards Center of Excellence)

Compliance

- Posted updated 2019 Project Income and Rent Tool

Executive

- Updated Agreed Final Orders (Debarment Orders: The Timbers Apartments, Lyons Village Townhomes; Administrative Penalty Orders: Cottonwood and Westway Apartments, Holland House Apartments, West Gate Apartments, Sutton Oaks II, Harmon Elliott Senior Citizens Complex, Coppertree Village, Oak Timbers Ennis, Cottonwood Apartments, Elmwood Apartments
- Posted instructions for registering support or opposition at TDHCA Board meetings

Fair Housing

- Added training description outside vendor for Property Owners and Managers

HOME and Homeless:

- Updated NOFA deadlines for 2018 HOME Single Family HBA and TBRA General Set-Aside
- Posted 2019 ESG Program Application Documents (Submission Procedures Manual, Threshold, Uniform Scoring, Street Outreach, Emergency Shelter, Homelessness Prevention, Rapid Re-housing)
- Posted ESG Application Guidance Webinar, ESG Basics Webinar, ESG Match Guidance Webinar, and related materials
- Updated ESG Application Reference Materials (Continuum of Care Consultation, CoC Collaboration, CoC Regions Map, ESG Allocation Formula Tables, Fair Market Rents, Federal ESG Interim Rule (24 CFR Part 576), HUD Income Limits, Income Determination Training, State ESG Rule (10 TAC Chapter 7), Texas Department of Housing and Community Affairs (TDHCA) Property Code)
- Posted updated HOME Single Family Setup and Draw Workbook
- Posted links for ESG Interim Regulations and Code of Federal Regulations
- Posted ESG Application Attachment Forms (Continuum of Care Consultation, Written Standards Certification, Termination Policy, ESG Applicant Certifications, Local Government Approval of Shelter Activities, Continuum of Care Collaborations)
- Posted ESG Local Competitions (Coordinator) document
- Updated Household Income Certification, TBRA Total Tenant Payment, and Single Family Development Loan Analysis Form
- Posted Draft HOME Program Rule for Homebuyer Assistance with New Construction or Rehabilitation (HANC)

Homeownership

- Posted registration information for TSHEP Homebuyer Education Training
- Posted updated MCC refinancing application

Human Resources

- Posted new employment application instructions and link for job openings

Migrant Labor Housing Facilities

- Posted updated licensed facilities list (total licensees is 202; 15 applications pending)
- Posted Outreach Materials (Employer Info Sheet, Calling Cards with hotline number, MLHF poster)
- Updated link for USDA census of agriculture activity (2017)

Multifamily:

- Posted Amended 2019-1 Multifamily Direct Loan Annual NOFA
- Posted public comment link to 2020 QAP and Rules Planning Project online forum
- Moved 2018 Pre-application Materials, 2018 Multifamily Uniform Application and related materials to Multifamily Archives
- Added 2019 9% Housing Tax Credit Full Application Log (dated May 29)
- Posted updated list for Direct Loan Application Log (June 6)

Neighborhood Stabilization Program

- Added 2019 Quarter 1 reports (for NSP1 and NSP3)

NOFA

- 2019 ESG NOFA
- Amended 2019 AYBR Statewide Allocation NOFA

Public Comment

- Public comment open for Draft 2020 Regional Allocation Formula Methodology
- Public comment open for Proposed new rule at 10 TAC, Chapter 23, Subchapter H, Homebuyer Assistance with New Construction or Rehabilitation (HANC)

Purchasing

- Posted RFQs for Single Family/Multifamily Bond Counsel, Bond/Securities Counsel, Documentation preparation Counsel, Low Income Housing Tax Credit Counsel
- Updated list of No-Bid contracts as required by state

Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
FAQ	Frequently Asked Questions	QCP	Quantifiable Community Participation
HBA	Homebuyer Assistance Program	REA	Real Estate Analysis
		RFA	Request for Applications
		RFO	Request for Offer
		RFP	Request for Proposals
		RFQ	Request for Qualifications
		ROFR	Right of First Refusal

HHSCC	Housing and Health Services Coordination Council	SLIHP	State of Texas Low Income Housing Plan
HHSP	Homeless Housing and Services Program	TA	Technical Assistance
HRA	Homeowner Rehabilitation Assistance Program	TBRA	Tenant Based Rental Assistance Program
HRC	Housing Resource Center	TICH	Texas Interagency Council for the Homeless
HTC	Housing Tax Credit	TSHEP	Texas Statewide Homebuyer Education Program
HTF	Housing Trust Fund	TXMCC	Texas Mortgage Credit Certificate
HUD	U.S. Department of Housing and Urban Development	VAWA	Violence Against Women Act
IFB	Invitation for Bid	WAP	Weatherization Assistance Program

2b

BOARD ACTION REPORT
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

2020 Qualified Allocation Plan (QAP) Planning Project report

The third 2020 QAP roundtable was held on May 22, 2019. Two topics were discussed with stakeholders—preservation policy and green building requirements.

The conversation began with a review of public comments received in Fall 2018 regarding the 2019 QAP. In both the matter of preservation and green building, the requested changes were of such a significant nature that considering them for inclusion in the rule would have warranted releasing the QAP for public comment again, to ensure conformance with appropriate rulemaking regulations; taking the rule out for further comment was not possible under the statutory deadline for the Department to provide the QAP to the Governor by November 15, 2018.

Preservation

The first comment requested that the affordability period for Housing Tax Credit (HTC) Developments be extended to 55 years. Today, all HTC Developments have a 30-year Affordability Period, at a minimum. The 9% HTC program has a scoring item at 10 TAC §11.9(e)(5), Extended Affordability, that extends the Affordability Period to 35 years.

Some stakeholders at the roundtable were supportive of a 55-year Affordability Period, as a scoring item. They noted that because 9% tax credits are a limited governmental resource and many new Developments are currently being located in high opportunity areas, the Department needs to ‘get the most’ out of its investment. However, other stakeholders expressed concerns with increasing the Affordability Period by an additional two decades. Several commenters worried about the maintenance costs of such Developments after 30 years; others noted that, given changing tastes among both residents and architects, it may not be a wise policy for the Department to commit its time and resources to an aging portfolio of buildings that may eventually be undesirable. Staff noted that with a 30-year Affordability Period already generally requiring at least one re-syndication, a 55-year Affordability Period would more than likely require two re-syndications. As the Department’s portfolio of aging Developments grows, much of the Department’s bond cap could be consumed by Acquisition and Rehabilitation of former 9% HTC Developments. Staff noted that, while the 4% HTC program has indeed become the de facto preservation financing for existing affordable Developments in the state, the program is still responsible for a significant portion of New Construction activity.

Some stakeholders pointed to Developments that have exited the HTC program through the Qualified Contract (QC) process, as a harbinger for what is to come in the year 2020, when dozens of HTC Developments will see their 30-year Affordability Periods expire (for awards made in 1990). These commenters argued that losing good Developments in high opportunity areas is a

flaw in the HTC program that ought to be rectified. However, other commenters maintained that a Development's expiring Affordability Period is not a flaw in the tax credit program and is instead actually part of its design. It should be noted that this perceived conflict is being widely discussed at the national level and Texas is not alone in trying to find a balance between doing what is desirable for low-income households, and what is reasonable for maintaining interest in the program from developers.

The roundtable participants agreed that, barring a change to the Affordability Period, the Department should consider implementing a preservation policy within the At-Risk Set-Aside of the QAP (10 TAC §11.5(3)). Some stakeholders suggested crafting scoring criteria within the Set-Aside to preserve those existing affordable Developments that are especially valuable according to Departmental criteria.

Similar concerns were shared by roundtable participants regarding preservation policy. One comment was that for Ownership Transfers for Developments awarded under the Nonprofit Set-Aside, the new Owner should also qualify under the Nonprofit Set-Aside. There was concern that such a requirement would actually prevent preservation by limiting the number of eligible buyers of a Development. Another public comment to the 2019 QAP had asked that the Ownership Transfer provisions (10 TAC §10.406) be amended to preclude any future right to Qualified Contract for the Development undergoing a transfer. One stakeholder worried that this might violate the property rights of the initial Land Use Restriction Agreement (LURA).

As the roundtable conversation shifted to action steps the Department should take in the future to develop its preservation policy, several stakeholders requested that TDHCA create a database composed of Developments nearing the end of their Affordability Periods. The database would include pertinent information on each Development besides just its programmatic requirements and Affordability Period, including census tract information, occupancy levels, its financials, etc. The Department's preservation strategies, as delineated in a future QAP, will ideally identify the best properties from that database for targeted investment.

Green and Sustainable Building Practices

The second topic discussed at the roundtable was the Department's policies regarding green and sustainable building practices. As with public comments on preservation policy, the Department received public comments on the 2019 QAP that could not be considered without an additional public comment period.

Stakeholders were generally supportive of the Department incentivizing the adoption of energy- and water-efficient building practices so long as they are economical, but asked that the Department consider local context and unique building requirements. For example, roughly 30-40% of the annual Developments financed by the Multifamily Finance Division are Rehabilitations, for which it is more difficult than New Construction to implement green building practices. Stakeholders requested that many water- and energy-conservation threshold items be extended to future Developments so as not to limit artificially the options Developers have to build sustainably. To identify those cost-effective options that could potentially be placed in the QAP, stakeholders requested that the Department create a small work group to closely study

existing energy- and water-efficiency criteria in the QAP, and propose possible revisions before publication of the proposed QAP rule in September.

2c

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

3

ORAL PRESENTATION

4

BOARD REPORT ITEM
INTERNAL AUDIT DIVISION
JUNE 27, 2019

Report on the Meeting of the Audit and Finance Committee and Action on recommendations of that committee

- i. Approval of the Updated FY 2020 Operating Budget
- ii. Approval of the FY 2020 Housing Finance Division Budget

BOARD ACTION REQUEST
FINANCIAL ADMINISTRATION DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on the FY 2020 Operating Budget

RECOMMENDED ACTION

WHEREAS, the Governing Board of the Texas Department of Housing and Community Affairs (the Department or TDHCA) is required to approve a FY 2020 Operating Budget; and

WHEREAS, the Department is required to submit the budget to the Governor's Office and the Legislative Budget Board (LBB); and

WHEREAS, the Department is required to establish the salary of the Executive (or Acting) Director;

NOW, therefore, it is hereby

RESOLVED, that the FY 2020 Operating Budget, in the form presented to this meeting, is hereby approved; and

RESOLVED, that the Board approves a salary for the Executive (or Acting) Director up to and including the amount budgeted for the position in Article VII of the 2020-2021 General Appropriations Act (GAA)

FURTHER RESOLVED, that upon approval by the TDHCA Governing Board, the Department will submit the budget to the Governor's Office and the LBB; and

FURTHER RESOLVED, that J.B. Goodwin, Board Chair, be and he hereby is authorized and empowered, for and on behalf of this Board, to establish the salary of the Executive (or Acting) Director subject to the provisions of the 2020-2021 GAA; and

FURTHER RESOLVED, that the Department will submit written notice of any action taken by the Board regarding salary of the Executive (or Acting) Director to the Governor's Office, the LBB, and the Comptroller.

BACKGROUND

In accordance with Tex. Gov't Code Chapter 2306, TDHCA is charged with preparing an operating budget for Board adoption on or before September 1 of each fiscal year. The budget includes

operational expenses distributed among the Department's divisions. It does not include federal or state program funds that pass through to subrecipients except for administrative funds used by the Department associated with those federal or state funds that are retained and reflected in the budget. This budget anticipates maximizing all federal administrative resources. In addition, in accordance with internal auditing standards and the Board's internal audit charter, the budget includes the Internal Audit Division's annual operating budget.

This FY 2020 Internal Operating Budget, which the Board is being asked to approve, corresponds to the first year of the biennial GAA passed by the 86th Texas Legislature which appropriated \$287,263,052. In total, this budget provides for expenditures and associated revenues of \$27,727,986 or a \$268,099 (1.0%) decrease from the prior year budget.

The budget reflects 311 Full Time Equivalent (FTEs) (64 are related to the Manufactured Housing Division) which is two less than appropriated.

Additionally, the Housing Finance Division budget, which is funded with fees generated from the Department's Bond, Housing Tax Credit, Asset Management, and Compliance activities, decreased by \$51,734 or -0.3%. This decrease is primarily attributed to the Capital Budget and advertising expenses.

For a complete explanation of the aforementioned budget categories and details, please see the accompanying Comparison Report.

TEXAS DEPT. OF HOUSING AND COMMUNITY AFFAIRS

FY 2020 Operating Budget

Comparison Report

June 27, 2019

This Comparison Report provides an explanation of some of the changes to cost categories.

In total, this FY 2020 Operating Budget is \$27,727,986 or a \$268,099 (1.0 %) decrease over the prior year budget. Below are the highlights of the FY 2020 Budget. Please refer to the "Comparison by Expense Object" schedule on Page 4.

1. **Salaries/Wages and Payroll Related Costs.** These two line items represent 83% of the total operating budget.

The budget reflects 311 Full Time Equivalents ("FTEs").

The Salaries and Wages line item increased by \$358,295 or 2.0%. This total increase from 2019 is primarily due to the normal growth rate of 1% and the addition of 2 FTEs, as well as the legislatively approved increase to the Executive Director position. The two new FTEs are a result of the addition of 1 FTE each in the Multifamily and Subrecipient Monitoring sections. One FTE was repurposed from the Fair Housing, Data Management, and Reporting section to the Section 8 program.

Payroll related costs increased \$85,991. The increase in payroll related costs is proportional to the increase in salaries.

2. **Out of State Travel.** Out of State Travel increased by \$16,010. This increase is in the areas of Compliance, Program Controls, Bond Finance, Multifamily, and Community Affairs. The average costs for out of state trips has increased as well as the need for staff to attend trainings and conferences such as National Council of State Housing Agencies (NCSHA) semi-annual conferences offered across the US and bond pricings.
3. **Professional Fees.** Professional Fees have increased by \$289,421 related to the need for an expanded contract for inspection services. There is a substantial anticipated increase in Compliance Physical Inspections due to changed IRS regulations. Additionally, there is a need for outsourcing of Section 8 inspections due to more comprehensive inspection requirements imposed by the Department of Housing and Urban Development (HUD). There is also an increase in professional fees for the Community Affairs division for ongoing updates related to a database that was part of the Capital Budget in FY18 and FY19.

4. ***Repairs/Maintenance.** Repairs and Maintenance decreased by \$121,805 primarily due to lower computer related annual maintenance costs.
5. **Rentals and Leases.** Rentals and leases decreased by \$22,774 due to a decreased demand for paid rental locations for meetings and trainings.
6. **Materials and supplies.** Materials and supplies increased by \$9,964 due to an agency wide increase in cost of consumable supplies such as toner and related materials.
7. **Advertising.** Agency advertising costs decreased \$79,700 or 47.9%. The decrease in advertising costs is due to the conclusion of a FY19 marketing initiative by the Texas Homeownership Division. This cost is not part of the FY20 budget.
8. **Temporary Help.** Temporary Help decreased \$28,630. The decrease in this category is primarily due to the removal of a web redesign of the Texas Homeownership Programs for the new year. The initial cost of \$45,000 was included in the FY19 budget but for FY20 and moving forward there will be an ongoing maintenance cost of \$10,000 per year. However there was also an increase in the cost of the agency security services.
9. ***Furniture and Equipment.** Included in this category is the Legislature's approval of the Department's Hardware and Software Replacements project as it relates to non-capital expenses associated with the Department's Capital Projects, such as update and replacement of end-user computers and operational software upgrades, including the replacement of desktop computers (75) and laptops (96) that will be six years old or older and software updates. The benefits of these planned purchases include increased security, better performance for end-user computers, and the ability to provide continued support for TDHCA's enterprise systems, such as the Central Database, PeopleSoft Financials, MITAS Financials/Servicing, and the Manufactured Housing System.

This line item increased \$226,528 due to an anticipated increase in capital expenditures for items such as computers and printers, the majority of which will occur in the first year of the biennium.

10. ***Capital Outlay.** This category is also included in the Department's Legacy System Modernization Project as it relates to capital expenses such as server hardware upgrades and network equipment enhancements, to ensure systems remain supported by vendors and security and reliability remain at high levels. In FY19 this section included the People Soft financials Centralized Accounting and Payroll/Personnel System ("CAPPS") upgrade of \$200,000, and the Cyber Security Project of \$180,000 – of which \$80,000 was moved forward from FY18 to FY19 for continued expenditures. New software needed by the Community Affairs division costing \$600,000 was originally budgeted in FY18 but has also been moved to FY19 for continued work on this project. Capital Outlay decreased \$1,007,600 due to the items mentioned above that are no longer in the agency's budget for FY20.

**The Department's Capital Projects are included in Repairs/Maintenance, Furniture and Equipment and Capital Outlay. These projects include hardware and software replacements, ongoing CAPPs financials license fees, and the Disaster recovery services through the data center services performed by the Department of Information Resources.*

Comparison by Expense Object

	2019 Budget (a)	2020 Budget (b)	Variance (b-a)	Percentage Change
Salaries and Wages	\$ 18,130,352	\$ 18,488,647	\$ 358,295	2.0%
Payroll Related Costs	4,351,285	4,437,275	85,991	2.0%
Travel In-State	538,732	547,900	9,168	1.7%
Travel Out-of-State	125,394	141,404	16,010	12.8%
*Professional Fees	1,222,098	1,511,518	289,421	23.7%
Material and Supplies	273,542	283,506	9,964	3.6%
*Repairs/Maintenance	731,680	609,876	(121,805)	-16.6%
Printing and Reproduction	16,247	23,597	7,350	45.2%
Rentals and Leases	158,101	135,327	(22,774)	-14.4%
Membership Fees	84,582	86,930	2,348	2.8%
Staff Development	147,500	148,850	1,350	0.9%
Insurance/Employee Bonds	409,174	408,101	(1,072)	-0.3%
Employee Tuition	8,000	7,000	(1,000)	-12.5%
Advertising	166,350	86,650	(79,700)	-47.9%
Freight/Delivery	27,350	20,950	(6,400)	-23.4%
Temporary Help	158,580	129,950	(28,630)	-18.1%
*Furniture and Equipment	49,250	275,778	226,528	460.0%
Communication and Utilities	366,286	360,900	(5,386)	-1.5%
*Capital Outlay	1,007,600	-	(1,007,600)	-100.0%
State Office of Risk Management	23,981	23,826	(154)	-0.6%
Total Department	27,996,084	\$ 27,727,986	\$ (268,099)	-1.0%

* Budget categories that include Capital Budget items

FTE's	309	311	2.00	0.6%
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Method of Finance:

General Revenue:

GR-General Revenue	\$ 810,708	\$ 816,670	\$ 5,962	0.7%
GR-Earned Federal Funds	2,206,653	2,310,063	103,410	4.7%
Federal Funds-Non-HERA	6,959,086	6,829,706	(129,380)	-1.9%
Federal Funds-Neighborhood Stabilization Program (HERA)	114,790	115,130	339	0.3%
Appropriated Receipts - Housing Finance	17,024,184	16,972,451	(51,734)	-0.3%
Appropriated Receipts - Manufact. Housing	512,645	512,296	(349)	-0.1%
Interagency Contracts	368,017	171,672	(196,345)	-53.4%
Total, Method of Finance	\$ 27,996,084	\$ 27,727,986	\$ (268,099)	-1.0%

Note: Appropriated Receipts - Housing Finance include Bond Administration Fees, Housing Tax Credit Fees, Asset Management Fees, Compliance Fees, and Migrant Labor Housing Fees.

Methods of Finance

The 2020 Budget includes the following sources:

General Revenue

State appropriated funds including Housing Trust Fund, Housing and Health Services Coordinating Council, Homeless Housing and Services Program,.

Earned Federal Funds - Federal funds appropriated for indirect costs associated with administering federal funds.

Federal Funds

Federal Funds-(Non-Housing and Economic Recovery Act (“HERA”)) - Core federal programs such as Community Services Block Grant, Emergency Solutions Grant, HOME, U.S. Dept. of Energy (“DOE”), Section 8 Housing, Section 811 PRA Program, Low Income Home Energy Assistance Program, and National Housing Trust Fund.

Neighborhood Stabilization Program - Federally appropriated funds specifically designated for HERA-NSP.

Appropriated Receipts - Housing Finance (“HF”):

Bond Admin Fees - Appropriated receipts associated with our Single Family and Multifamily bond programs such as application fees, issuance fees, and administration fees.

Low Income Housing Tax Credit Fees - Appropriated receipts associated with our housing tax credit program such as application fees and commitment fees.

Compliance Fees - Fees assessed to multifamily developers for the purpose of ensuring long-term compliance.

Asset Oversight Fees - Fees assessed to Tax Credit Assistance Program (“TCAP”) and Exchange property owners for the purpose of safeguarding the Department’s financial interest in their properties.

Migrant Labor Housing Fees – Fees assessed for the purpose of inspections of migrant housing facilities.

Appropriated Receipts (MH) - Manufactured Housing Division fees generated through inspecting, licensing, and titling activities.

Interagency Contracts - Contract with the Texas Department of Agriculture for the Office of Colonia Initiatives (“OCI”) Self-Help Center’s operation and administration; and a potential contract still in negotiation with HHSC for Home and Community-Based Services-Adult Mental Health Program (“HCBS-AMH”), a program that supports individuals with mental illnesses.



FISCAL YEAR 2020
OPERATING BUDGET
(September 1, 2019 through August 31, 2020)

June 27, 2019

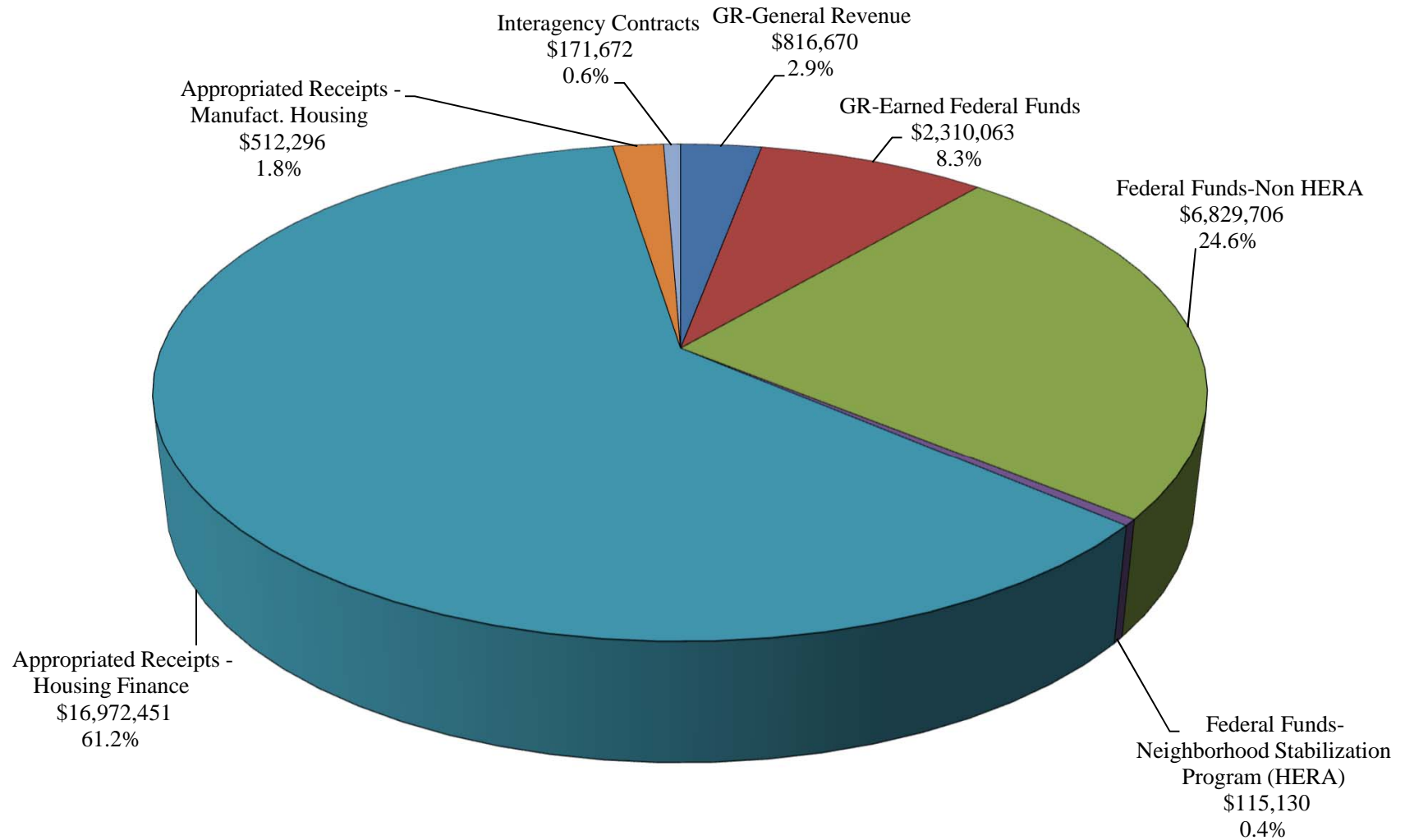
Prepared by the Financial Administration Division

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS FY-2020 OPERATING BUDGET**

T A B L E O F C O N T E N T S

Method of Finance Chart..... 1
Agency Wide – By Method of Finance..... 2

Texas Department of Housing and Community Affairs FY 2020 Method of Finance



Total Budget: \$27,727,986

Agency Wide - By Method of Finance

September 1, 2019 thru August 31, 2020

Budget Categories	General Revenue	Federal Funds	Appropriated Receipts	Interagency Contract	MH Appropriated Receipts	Total
Salaries	2,086,778	4,676,000	11,192,669	128,282	404,919	18,488,647
Payroll Related Costs	595,645	1,063,682	2,649,980	30,788	97,181	4,437,275
Travel In-State	32,700	192,190	313,010	10,000	-	547,900
Travel Out-of-State	4,364	40,975	96,065	-	-	141,404
Professional Fees	63,628	534,718	913,172	-	-	1,511,518
Materials/Supplies	56,944	37,946	188,616	-	-	283,506
Repairs/Maintenance	114,156	60,086	435,633	-	-	609,876
Printing and Reproduction	3,266	4,871	15,459	-	-	23,597
Rental/Lease	23,200	17,312	94,815	-	-	135,327
Membership Dues	1,814	25,069	60,047	-	-	86,930
Staff Development	13,958	49,670	85,222	-	-	148,850
Insurance/Employee Bonds	61,162	76,776	257,565	2,402	10,196	408,101
Employee Tuition	3,241	-	3,759	-	-	7,000
Advertising	38	2,563	84,049	-	-	86,650
Freight/Delivery	986	1,820	18,144	-	-	20,950
Temporary Help	16,417	20,470	93,063	-	-	129,950
Furniture/Equipment	2,259	77,257	196,063	200	-	275,778
Communications/Utilities	40,523	62,553	257,823	-	-	360,900
Capital Outlay	-	-	-	-	-	-
State Office of Risk Management	5,653	878	17,296	-	-	23,826
Total	3,126,734	6,944,835	16,972,451	171,672	512,296	27,727,986
Budget by Method of Finance, 2019	3,017,361	7,073,876	17,024,184	368,017	512,645	27,996,084
Variance from 2019	109,372	(129,041)	(51,734)	(196,346)	(349)	(268,098)

BOARD ACTION REQUEST
FINANCIAL ADMINISTRATION DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on the FY 2020 Housing Finance Division Budget

RECOMMENDED ACTION

WHEREAS, the Governing Board of the Texas Department of Housing and Community Affairs (the Department or TDHCA) is required to approve a FY 2020 Housing Finance Division Budget; and

WHEREAS, the Department is required to submit the budget to the Governor's Office and the Legislative Budget Board (LBB);

NOW, therefore, it is hereby

RESOLVED, that the FY 2020 Housing Finance Division Budget, in the form presented to this meeting, is hereby approved; and

FURTHER RESOLVED, that upon approval by the TDHCA Governing Board, the Department will submit the budget to the Governor's Office and the LBB.

BACKGROUND

In accordance with Tex. Gov't Code §2306.113, the Department shall create a separate annual budget for the Housing Finance Division to certify the housing program fee revenue that supports the Department. While at the time the statute was created such a division existed, the duties associated with the Housing Finance Division have been spread among multiple divisions in the agency as reorganizations to improve efficiency have occurred. This budget is a subset of the whole operating budget and shows the Housing Finance revenues also known as Appropriated Receipts that support the operating budget.

This FY 2020 Housing Finance Division Budget, which the Board is being asked to approve, is \$16,972,451. The Housing Finance Budget complies with the provisions of the General Appropriations Act (GAA).

In addition, in accordance with Tex. Gov't Code §§2306.117 and 2306.118, the Department incurs operational and nonoperational expenses in carrying out the functions of the Housing Finance Division. These types of expenses may be paid only

from revenues or funds provided under this Chapter. The revenue and funds of the Department received by or payable through the programs and functions of the Housing Finance Division, other than funds necessary for the operation of the Housing Finance Division and appropriated funds, shall be administered outside the treasury with the Texas Treasury Safekeeping Trust Company.



Housing Finance Budget Appropriated Receipts

September 1, 2019 thru August 31, 2020

Budget Categories	Program					Payroll Related		Total
	Executive Administration	Agency Administration	Controls and Oversight	Bond Finance	Programs	Capital Budget	Costs	
Salaries	1,567,709	2,882,215	4,323,831	930,122	1,488,792			11,192,669
Payroll Related Costs	-	-	-	-	-		2,649,980	2,649,980
Travel In-State	50,675	7,924	208,350	21,500	24,560			313,010
Travel Out-of-State	29,794	6,336	18,200	23,200	18,535			96,065
Professional Fees	112,654	248,042	445,429	51,608	18,517	36,923		913,172
Materials/Supplies	21,121	64,465	63,151	14,964	24,916			188,616
Repairs/Maintenance	27,817	128,046	162,453	48,415	35,561	33,341		435,633
Printing and Reproduction	2,189	2,775	2,383	6,050	2,063			15,459
Rental/Lease	6,777	50,604	18,106	12,591	6,737			94,815
Membership Dues	49,253	2,658	6,611	1,350	175			60,047
Staff Development	10,675	23,604	29,665	10,200	11,077			85,222
Insurance/Employee Bonds	31,481	75,647	103,494	18,972	27,970			257,565
Employee Tuition	-	3,759	-	-	-			3,759
Advertising	1,500	113	-	82,000	437			84,049
Freight/Delivery	1,617	2,404	9,220	4,600	303			18,144
Temporary Help	34,259	15,302	14,601	18,186	10,715			93,063
Furniture/Equipment	6,500	6,829	5,565	1,800	2,113	173,256		196,063
Communications/Utilities	34,944	58,517	90,433	43,337	30,592			257,823
Capital Outlay	-	-	-	-	-			-
State Office of Risk Management	1,592	6,752	5,877	965	2,110			17,296
Total	1,990,557	3,585,992	5,507,368	1,289,859	1,705,175	243,520	2,649,980	16,972,451

Method of Finance:

Single Family Bond Administration Fees	1,677,409
Multifamily Bond Administration Fees	535,892
Compliance Fees	3,717,392.52
Housing Tax Credit Fees	2,386,772.01
Asset Management Fees	482,774
Subtotal:	8,800,239
Central Support Single Family Bond Administration Fees	736,879
Central Support Multifamily Bond Administration Fees	1,359,564
Central Support Compliance Fees	3,153,788
Central Support Housing Tax Credit Fees	2,315,412
Central Support Asset Management Fees	606,569
Subtotal:	8,172,212
Total, Method of Finance	16,972,451

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BOARD ACTION REQUEST

OCI, HTF & NSP DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on the 2020-2021 State Housing Trust Fund Biennial Plan.

RECOMMENDED ACTION

WHEREAS, the General Appropriations Act (GAA) enacted by the 86th Legislature appropriated the Texas Department of Housing and Community Affairs (the Department) \$10,443,402 of State General Revenue for the State Housing Trust Fund (HTF) 2020-2021 biennium;

WHEREAS, Rider 9(c) of the GAA requires the Department to provide a biennial report to the Legislative Budget Board, the House Appropriations committee, and the Senate Finance committee no later than October 1 detailing the Department's plan to expend funds from the HTF;

WHEREAS, to promote transparency and the expeditious use of these funds, the Department publishes this biennial report detailing its plan for each year's expenditure of the HTF biennial appropriation;

WHEREAS, the Texas Bootstrap Loan Program (Bootstrap Program) is an HTF program for self-help housing construction in which very low-income households purchase or refinance real property on which to build new housing or repair existing homes by providing at least 65% of the necessary labor through a state-certified Nonprofit Owner-Builder Housing Provider;

WHEREAS, the Amy Young Barrier Removal Program (AYBR) is an HTF Program for home modification grants that increase accessibility for homeowners, tenants, and members of their household who are Persons with Disabilities, in addition to correcting other hazardous and unsafe housing conditions, as approved by the Department; and

WHEREAS, the Board previously authorized the Department to utilize no more than \$250,000 per biennium of additional HTF loan repayments to be able to address unforeseen obstacles that may arise on existing Department contracts, activities or assets during the course of Single Family program administration, and the Department seeks to retain this authority for the 2020-2021 biennium;

WHEREAS, staff recommends that the activities noted above warrant continuation through the 2020-2021 HTF Plan;

NOW, therefore, it is hereby

RESOLVED, that the proposed 2020-2021 Housing Trust Fund Biennial Plan, as presented, is approved and staff is authorized and directed to submit the HTF Plan to appropriate legislative offices and take any other necessary actions to effectuate the foregoing; and

FURTHER RESOLVED, that the Acting Director and his designees be authorized and directed, for and on behalf of the Department, to draft and release Notices of Funding Availability based on programming as outlined in the HTF Plan and HTF Rule.

BACKGROUND

History: The Texas Legislature established the Housing Trust Fund in 1993 to provide state general revenue for affordable housing activities. The program receives state appropriations, which include loan repayments from previous HTF projects, to fund the HTF. The Department awards funding in the form of grants and/or loans to nonprofits, units of local government, councils of government, local mental health authorities, other public agencies, and public housing agencies to serve low-income households. State statute does not direct the specific activities that are to be implemented but requires the publication of a plan that details how the Department will program and expend the funds. The Department has implemented a diversity of programs with HTF resources to varying success. The HTF has now evolved to focus on two primary programs: the statutorily required Bootstrap Program and the Amy Young Barrier Removal Program.

Background of Action Item: The GAA requires that the Department provide a biennial report to the Legislative Budget Board, the House Appropriations committee, and the Senate Finance committee no later than October 1 detailing the Department’s plan to expend funds from the Housing Trust Fund. The HTF Biennial Plan is summarized below and the Plan is attached.

During the Regular Session of the 86th Legislature, the HTF was appropriated \$10,443,402 in General Revenue for the 2020-2021 biennium. The funding shall be utilized as follows:

2020-2021 Estimated Biennial Funds for Housing Trust Fund

Use of Funds	Amount
Total Biennial Appropriation	\$10,443,402¹
Less 10% Administration for TDHCA	(\$1,044,340)
Net Balance Available for TDHCA Programming	\$9,399,062
Less \$3,000,000/year for Texas Bootstrap Program*	(\$6,000,000)
Less \$1,699,531/year for Amy Young Barrier Removal Program	(\$3,399,062)
Total Remaining to be Programmed	\$0

*Per Section 2306.7581 (a-1) of the Texas Government Code, at least \$3,000,000 each state fiscal year is required to be utilized for this purpose.

¹ This amount includes an estimate of \$2,400,000 per year in interest earnings and loan repayments. Up to an additional \$250,000 will also be reserved from interest earnings and repayments for Single Family workout activities, as further described herein.

The HTF plan identifies various requirements from riders in the GAA and in sections of Tex. Gov't Code Chapter 2306 that pertain to the administration of the HTF. These are:

- Rider 8 which requires that \$2.4 million in anticipated interest earnings and loan repayments received by the Department be included in the dollar amount appropriated each fiscal year under the HTF;
- Rider 9(a) which requires that all fund deposits to the HTF must be made to the Texas Treasury Safekeeping Trust Company during September of each fiscal year;
- Tex. Gov't Code §2306.111(d-1) which describes when the Regional Allocation Formula is applicable to the HTF; and
- Tex. Gov't Code §2306.202 which specifies that the first \$2.6 million of HTF funds must be made available exclusively to units of local government, public housing authorities, and nonprofit organizations.

The HTF plan includes program descriptions for the two HTF-funded programs, program budgets, maximum assistance amounts, eligibility requirements, administrative funding, and applicability of regional allocation of funding.

The HTF plan also describes administrative processes and funding considerations that facilitate Single Family operations over the course of the biennium. For example, the HTF plan utilizes no more than \$250,000 per biennium of the HTF loan repayments that exceed the requirements under Rider 8 of the GAA for practical solutions and development workouts that are not readily addressed with federal funds. The HTF plan also establishes the use of late fees collected from HTF borrowers for conducting certain Single Family asset management transactions for which there are few other Department funds available. Such administrative elements of the HTF Plan allow the Department to better manage risk and fulfill its mission.

The HTF Plan authorizes staff to proceed with issuing Notices of Funding Availability (NOFA) to expedite utilization of funds, as long as those NOFAs are reflective of the HTF Plan and HTF Rules. Staff will commit and expend funds via contracts and reservation agreements and may amend NOFAs from time to time. Funds will be released consistent with the annual appropriations of \$5,184,451 for FY 2020 and \$5,258,951 for FY 2021.

Staff recommends that the board approve, or approve with amendments, the proposed 2020-2021 HTF Biennial Plan and authorize staff to draft and release NOFAs based on programming outlined in the HTF Plan and HTF Rule.

Texas Department of Housing and Community Affairs
2020-2021 Housing Trust Fund Biennial Plan



David Cervantes, Acting Director
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Austin, TX 78711-3941
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www.tdhca.state.tx.us

Approved by the Board of
The Texas Department of Housing and Community Affairs
On June 27, 2019

Introduction and Purpose

During the Regular Session of the 86th Legislature, the Department was appropriated General Revenue for the Housing Trust Fund (HTF) in the amount of \$10,443,402 for the 2020-2021 Biennium. Rider 9(c) of the General Appropriations Act (GAA) requires the Department to provide an annual report to the Legislative Budget Board, the House Appropriation Committee, and the Senate Finance Committee no later than October 1st detailing the Department’s plan to expend funds from the Housing Trust Fund. The Department generates this plan biennially to promote strategic long-term planning and the expeditious use of these funds.

The HTF was established in 1991 by the 72nd Texas Legislature, Senate Bill 546, to provide loans, grants, or other comparable forms of assistance to income-eligible individuals and households to finance, acquire, rehabilitate and develop decent, safe and sanitary housing. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts or grants.

Appropriation Details

The Department annually receives loan repayments and accrued interest that contribute to the HTF. Rider 8 of the GAA strategy A.1.3 and A.1.4, clarifies that an estimated \$2,400,000 per year in interest earnings and loan repayments are included in funds appropriated each year under the HTF.

	FY2020	FY2021	Total Biennium
Total Annual General Revenue Appropriation	\$5,184,451	\$5,258,951	\$10,443,402

Rider 9(a) of the GAA requires that:

“Out of funds appropriated above in Strategy A.1.3...and A.1.4,...all funds above those retained for administrative purposes in fiscal year 2020 and fiscal year 2021 shall be deposited in the Housing Trust Fund in the Texas Treasury Safekeeping Trust Company established under Government Code, Chapter 2306, during September of each fiscal year.”

The Department shall withhold approximately \$1,044,340 (10%) for the biennium for Department administrative costs.

The total estimated biennial funding and usage are outlined in the following chart.

Estimated 2020-2021 Biennial Funds for Housing Trust Fund

Use of Funds	Amount
Total Biennial Appropriation	\$10,443,402²
Less 10% Administration for TDHCA	(\$1,044,340)
Net Balance Available for TDHCA Programming	\$9,399,062
Less \$3M/year for Texas Bootstrap Program*	(\$6,000,000)
Less \$1,699,531/year for Amy Young Barrier Removal Program	(\$3,399,062)
Total Remaining to be Programmed	\$0

*Per Section 2306.7581 (a-1) of the Texas Government Code, at least \$3,000,000 each state fiscal year is required for this purpose.

Biennial Funding and Allocation Considerations

Statutory requirements listed below direct how the funds may be programmed for use. Due to the demand for current HTF activities, the proposed HTF plan does not include any new activities.

Texas Bootstrap Loan Program

Tex. Gov’t Code Section 2306.7581 establishes a transfer requirement for the Texas Bootstrap Loan Program, stating that the Department must dedicate at least \$3 million to the program each fiscal year from HOME funds, HTF monies, or from funds appropriated by the legislature. The Department has determined that HOME funds are not the best resource to accomplish the goals of the Texas Bootstrap Loan Program because of the demand by nonparticipating jurisdictions, additional federal limitations, and extensive HOME Program reporting requirements. The Housing Trust Fund is the most practical appropriated source available for the Department to meet the Bootstrap Program’s statutory transfer requirement.

Eligible Entities to Receive Funds

Pursuant to Tex. Gov’t Code Section 2306.202, the Department must target funds for specific types of eligible entities. Section 2306.202(a) states:

“In each biennium the first \$2.6 million available through the HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations so long as at least 45 percent of available funds in excess of the first \$2.6 million shall be made available to nonprofit organizations for the purpose of acquiring, rehabilitating, and developing decent, safe, and sanitary housing. The remaining portion shall be distributed to nonprofit organizations, for-profit organizations, and other eligible entities.”

² This amount estimates approximately \$2,400,000 per year in interest earnings and loan repayments. Up to an additional \$250,000 will also be reserved for Single Family workout activities, as further described herein.

Regional Allocation Formula (RAF) and Geographic Dispersion

As specified in Tex. Gov't Code Section 2306.111(d-1), funds are not required to be allocated according to the RAF if:

“(2) the funds or credits are allocated by the department primarily to serve Persons with Disabilities.”

The Amy Young Barrier Removal Program serves only Persons with Disabilities. However, as noted on page 6 of this plan, to promote geographic dispersion of the competitive Amy Young Barrier Removal Program funds, the funds will be released geographically in order to maximize opportunity for regions with historically low involvement to participate.

HTF Plan Administration

In approving the HTF plan, the Board authorizes staff to proceed with issuing Notices of Funding Availability (NOFA) and make any needed amendments to the NOFAs to expedite utilization of funds. Funds may be committed and expended via contracts and reservation agreements. HTF programs may utilize various income determination methods noted in the general program descriptions in the HTF plan or outlined in the HTF Rule.

Using no more than \$250,000 per biennium of the HTF loan repayments and interest earnings *that exceed the requirements under Rider 8 of the GAA* (see Rider 8 of the GAA under "Appropriation Details" on page 2), the HTF may be used to respond to unanticipated, unique challenges that may arise in the course of implementing approved Single Family program contracts, activities, or assets. For example, if a household has been displaced for the rehabilitation of their home, and the Department faces subsequent eligibility concerns with the contractor performing that rehabilitation, these funds could expedite the completion of the rehabilitation so that the household may return to a safe, completed home as soon as possible.

If a balance exists from the previous biennium, the Department shall transfer only the necessary amount to replenish this fund to a maximum balance of \$250,000 at the start of the biennium. The Department anticipates that the need to use HTF excess loan repayments and interest earnings for Single Family Program workouts will be infrequent and used as a last resort only, such as when it poses severe practical challenges, or it is impossible to use federal funds. These funds will be for internal disposition, and neither households nor program administrators will be able to apply for these funds.

In approving the HTF plan, the Board authorizes the use of any funds from loan repayments, interest earnings, deobligations, and any other additional HTF funds as allowed by statute in excess of those funds required under Rider 8, to be programmed into current Department activities or activities approved in the HTF Plan. Prior to any programming, the Department shall withhold 10% of such funds for Department administrative costs.

Lastly, in approving the HTF plan, the Board authorizes the use of late fees collected from HTF borrowers for Single Family asset management activities. These funds will allow the Department to budget for the necessary transactions that arise in the course of Single Family asset management, such as paying off first lien holders on delinquent single family properties on which the Department is in second or lower lien position; paying off taxing authorities to avoid tax foreclosure; securing and

preparing abandoned properties to return to the marketplace; related travel and administrative costs, etc. The HTF will utilize these late fees for Single Family asset management activities only when the appropriate solution cannot reasonably be addressed with other funds.

Texas Bootstrap Loan Program: \$6 million from the 2020-2021 Appropriation

Program Description: The Texas Bootstrap Loan Program makes funds available to state-certified Nonprofit Owner-Builder Housing Providers (NOHPs) and Colonia Self-Help Centers to purchase or refinance real property on which to build or improve residential housing through self-help construction with very low-income households (Owner-Builders). Tex. Gov't Code Section 2306.7581(a-1) requires the Department to make at least \$3,000,000 available each fiscal year for mortgage loans to households with income not exceeding 60% of Area Median Family Income (AMFI) or the statewide income limits, whichever is greater. Funding is available until August 31, 2021, or until all funding has been reserved.

Maximum Loan Amount: Bootstrap loans shall not exceed \$45,000 per household. Eligible entities must apply to access a reservation system that makes funds available on a first-come, first-served basis.

Eligibility Requirement: Owner-Builders must have a household income not exceeding 60% of the AMFI or the statewide income limits, whichever is greater; must have resided in Texas for the preceding six months; and must have successfully completed an owner-builder education class. Owner-Builders must agree to provide at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified Nonprofit Owner-Builder Housing Provider or Colonia Self-Help Center. The Department will define household income limits in accordance with the U.S. Department of Housing and Urban Development HOME Investment Partnership Program Income Limits.

Administrative Fees: The Department will pay an administrative fee equal to 10% of the loan amount to Administrators upon project completion.

Geographic Dispersion: Two-thirds of the funds (approximately \$4,000,000) will be set aside for Owner-Builders with property in census tracts with median incomes not exceeding 75% of the state median income per the most recent statistics available. The remaining one-third (approximately \$2,000,000) will be released statewide. The RAF is not applicable to this funding due to the set-aside requirements of Tex. Gov't Code Section 2306.753(d). Furthermore, the remaining one-third of the fund balance does not exceed the \$3,000,000 ceiling cited in Tex. Gov't Code Section 2306.111(d-1)(3).

Other Considerations: If balances exist from previous Bootstrap funding cycles, those funds will be made available to Bootstrap activities. Funds accumulated in the Owner-Builder Revolving Loan funds may also be made available in the HTF plan. This use of funds achieves the statutory requirements for funding the Texas Bootstrap Loan Program and for targeting nonprofit organizations. This activity achieves significant leveraging of other public and private funding sources, promotes the Department's mission and provides for repayment to the Housing Trust Fund.

Amy Young Barrier Removal Program: \$3,399,062 from the 2020-2021 Appropriation

Program Description: This program provides one-time grants of up to \$20,000 to Persons with Disabilities with household income not exceeding 80% of the AMFI or the statewide income limits, whichever is greater. This program funds home modifications that increase accessibility for homeowners, tenants, and members of their household who have a disability, in addition to correcting hazardous and unsafe housing conditions, as approved by the Department. Funding is available until August 31, 2021, or until all funding has been reserved.

Maximum Assistance Amount: One-time grants will not exceed \$20,000 per household. Eligible entities must apply to access a reservation system that makes funds available on a first-come, first-served basis adjusted for the geographic dispersion process noted below. The maximum number of reservations per Administrator is further detailed in the Program NOFA.

Eligibility Requirements: Administrators may include Units of General Local Government, Councils of Governments, Nonprofit Organizations, Local Mental Health Authorities, and Public Housing Authorities. Administrators must demonstrate competence in accessibility standards and applicable building codes further detailed in the HTF Rule. Program beneficiaries must have a household income not exceeding 80% of the AMFI or the statewide income limits, whichever is greater. The Department will define household income limits in accordance with the U.S. Department of Housing and Urban Development HOME Investment Partnership Program Income Limits.

Administrative Fees: The Department will pay an administrative fee equal to 10% of the hard and soft costs to Administrators upon project completion.

Geographic Dispersion: The RAF does not apply to funds primarily serving Persons with Disabilities. However, the HTF Rule promotes geographic dispersion to ensure that all rural and urban subregions have an opportunity to access funds before they must compete on a first-come, first-served basis with the rest of the state.

Each year of the biennium, each state region will receive at least \$100,000 (enough for five fully funded activities). The remaining funds shall be released geographically over time as prescribed by the HTF Rule. Over the course of the biennium, any additional funds beyond the original program allocations that derive from HTF loan repayments, interest earnings, deobligations, and other HTF funds in excess of those funds required under Rider 8 (see page 4 of this plan) may be made available statewide, and not geographically dispersed.

6

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Laurel Vista (19094) and Sagebrush Terrace (19095)

RECOMMENDED ACTION

WHEREAS, Tex Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

WHEREAS, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

WHEREAS, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio, with a minimum of three events of non-compliance;

WHEREAS, in the case of application Laurel Vista (19094) and Sagebrush Terrace (19095), the sponsors of the application (Herman Kittle) have thirteen properties in their portfolio, meaning that if they have seven Events of Noncompliance not corrected during the Corrective Action Period, they would be classified as a Category 3;

WHEREAS, Herman Kittle had ten events of noncompliance that were not corrected within the 90 day corrective action period, exceeding the minimum number of three events, and exceeding 50% of the number of properties in the Combined Portfolio;

WHEREAS, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3;

WHEREAS, on June 3, 2019, the Department notified the Applicant of the determination of their Category 3 status, and the Applicant then timely filed a dispute to EARAC as permitted under 10 TAC §1.303(g), and EARAC as permitted by rule, elected to not hear the dispute prior presenting this matter to the Board;

WHEREAS, the portfolio and Events of Noncompliance associated with Herman Kittle were approved in the past by the Board with conditions, those conditions have been

satisfied, and no new events of noncompliance have been identified to date that would suggest any change in performance since the prior approval;

WHEREAS, Tex Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance, however, the Board must fully document and disclose any instances in which the Board approves a project application despite any noncompliance; and

WHEREAS, Staff requests the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions, given the documentation of facts that establish that this Portfolio was approved in the past by the Board with conditions, those conditions have been satisfied, and no new events of noncompliance have been identified to date;

NOW, therefore, it is hereby

RESOLVED, that the Board has considered the compliance history of the Applicant to date, and determines, for Laurel Vista (19094) and Sagebrush Terrace (19095), that the Applicant's compliance history as documented and disclosed herein should not preclude a positive recommendation from EARAC; and

FURTHER RESOLVED, that the Application is authorized to proceed through its remaining evaluation and scoring, and proceed to EARAC for review and consideration of recommendation and possible conditions, without being precluded from a positive recommendation by EARAC because of its compliance history.

BACKGROUND

The Compliance Division monitors each property at least once every three years. After a monitoring visit, a report is sent to the owner identifying the Events of Noncompliance (if applicable). A 90 day corrective action period is provided, which can be extended for good cause if a request is made during the corrective action period. Tex. Gov't Code §2306.6719 provides that events of noncompliance that are corrected during the applicable corrective action period are disregarded for the purposes of assessing an applicant's compliance history when applying for funding. All correspondence between the Compliance Division and the Development is conducted through the Department's web-based Compliance Monitoring and Tracking System (CMTS). All the events of noncompliance discussed in this agenda item are now corrected, but were not corrected during their allowable corrective action period.

Herman Kittle's Events of Noncompliance include:

- Noncompliance with tenant selection criteria (cited at three properties)
- Noncompliance with Affirmative Marketing requirements (cited at one property)
- Household income above the income limit upon initial occupancy (cited at one property)
- Owner did not properly calculate utility allowance (cited at two properties)

- Failure to resolve final construction deficiencies (cited at one property)
- Noncompliance with social services (cited at one property)
- Noncompliance with lease requirements (cited at one property)

The assessment of compliance history is performed by the Compliance Division in accordance with the rules set out at 10 TAC §1.301, which define the level or “category” of compliance an applicant or affiliate has achieved. Under 10 TAC §1.301(e)(3), Category 3 is defined. Under 10 TAC §1.301(f)(3), following a process of how an Applicant may provide evidence or comment regarding the accuracy of the categorization, “if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award.”

Under the EARAC rule found at 10 TAC §1.303(c):

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award. . . .

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section. . . .

Accordingly, by rule, if an applicant or affiliate is considered by the Compliance Division to be a Category 3, and evidence and comment submitted do not change that designation, then the Compliance Division must recommend to EARAC denial of the award. In turn, EARAC cannot make a positive recommendation, and must recommend against the award because of the negative recommendation of the Compliance Division (as a required member of EARAC) if “the material requirement cannot be cured through one of the conditions . . . listed in Subsection (e).”

On October 11, 2018, after considering these Events of Noncompliance, this applicant was recommended for award by EARAC with conditions under the prior Previous Participation Review Rule and approved by the Board. At that time, there were 16 events of noncompliance. The applicant in this matter has pointed out that since their last approval, some of the events have dropped off and no new events have been identified. Further, they have pointed out that they will likely change from a Category 3 to a Category 2 in September of this year. All of the prior conditions that had been placed on the portfolio have now been met. Historically, this is a scenario that would typically have resulted in a positive recommendation by Compliance to EARAC. However, as detailed, above, the current Previous Participation Rule requires the Compliance Division to recommend denial of the award as the Combined Portfolio is classified as a Category 3.



HERMAN & KITTLE PROPERTIES, INC.

Real Estate Development • General Contracting • Property Management

May 31, 2019

Jo En Taylor, Senior Compliance Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Previous Participation Review for Applications 19094 and 19095

Ms. Taylor-

Thank you for your recent email regarding the previous participation review (PPR) conducted by the Texas Department of Housing and Community Affairs (TDHCA) with respect to Herman & Kittle Properties, Inc. (HKP) pending 9% applications.

HKP understands a Category 3 determination was made due to past events of noncompliance and because of this, the Compliance Division is recommending denial to the Executive Award Review Advisory Committee (EARAC).

While the Category 3 determination is not disputed, it is important to point out the dramatic improvements made by HKP over the last two years. The PPR conducted in May of 2017 included 20 total events. The number of events decreased to 10 for the 2019 PPR. Additionally, there have been zero new events added; all events included in the 2019 PPR are cumulative dating back to 2017. The timing for many of these events will sunset this year and result in a Category 2 status for HKP in September 2019 before a 2019 9% Commitment Notice will be fully executed.

HKP's Compliance/Property Management record has significantly improved over the last two years with the addition of a southern compliance division which is based in Texas. EARAC has acknowledged this improvement and awarded two deals to HKP in 2018. HKP's record continues to demonstrate compliance, but is caught in a situation where the rules changed, reducing the number of categories and thereby not allowing HKP to demonstrate progress through the category designation. HKP respectfully requests the opportunity to appear before EARAC at a meeting following the June TDHCA Board Meeting to review the marked improvements made concerning its affordable housing portfolio in Texas and appeal TDHCA staff's recommended denial related to HKP's pending 9% applications.

Furthering and consistently maintaining a satisfactory compliance record and meeting all funding/programmatic requirements is a high priority to HKP and great strides have been taken to improve performance in this area. Improvement in this area and the notable efforts made in furtherance of continued improvement of same should be considered as part of the PPR.

Thank you in advance for your careful review of this response. We are proud to work with TDHCA and look forward to continue this partnership in order to provide Texans with affordable, high-quality places to call home.

Sincerely,



Jeffrey L. Kittle
President and CEO

cc: Patricia Murphy, TDHCA
Homero Cabello, TDHCA



HERMAN & KITTLE PROPERTIES, INC.

Real Estate Development • General Contracting • Property Management

June 10, 2019

By Email

Ms. Brooke Boston, Chair
Executive Award Review Advisory Committee
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: EARAC Results - Previous Participation Review for Applications 19094 and 19095.

Dear Ms. Boston:

We have received an email from Jo En Taylor advising that after a review of the compliance history for Herman & Kittle Properties, Inc. ("HKP") and affiliates, we are still considered Category 3 under the new rules published in 10 TAC §1.301, *et. seq.* and effective December 30, 2018. This determination apparently compels the Compliance Division to recommend that EARAC to present Applications 19094 and 19095 to the TDHCA Board with a recommendation that approval of tax credit awards be denied. Although the email did not specifically state it, there was an implication that EARAC's recommendation will be to deny awards of tax credits because the Applicant is Category 3. We ask EARAC to look further and take into consideration the degree of compliance improvement that HKP has accomplished over the past few years. If EARAC can recommend these two Applications for awards with conditions, we think that would be a more appropriate outcome.

In May 2017 a Previous Participation Review showed 20 Total Events. The PPR currently under discussion has only 10 Total Events, with no new events added since 2017 and no events that are Uncorrected or had no response during the Corrective Action Period. This shows a vast improvement over the past 24 months. Additionally, many of the events cited will expire by September 2019, and we anticipate improvement to a Category 2 Applicant at that time.

For better visualization, here are the pertinent facts for the PPRs during the last 24 months.

Project #	Date	Portfolio	Total Events	Uncorrected	No CAP response
17007	5/25/17	14	20	3	12
17004	5/25/17	9	17	3	11
13117XFR	1/29/18	8	17	9	10
18431	9/18/18	10	16	0	4
19094/5	5/24/19	13	10	0	0

Most recently, in October 2018 the TDHCA Board approved an award of 4% tax credits to The Vireo (#18431), with HKP accepting the following two conditions:

1. For the entire HKP portfolio of properties in the State of Texas, including The Vireo, HKP will contract with a Third Party Compliance Agent to provide compliance oversight. Final approval will be determined by lender, and investor. For properties with HUD financing and/or HUD contract, HUD approval will also have to be received. For The Vireo Apartments, a qualified third party compliance agent will be contracted to provide compliance oversight at construction and equity closing. For The Vireo Apartments, and the entire HKP portfolio of properties in the State of Texas, the third party compliance agent will remain in place until October 1, 2019, or such earlier time as approved by the Department. The third party compliance agent will provide robust service to HKP in order to clear outstanding TDHCA audit responses, direct staff trainings, and respond to future correspondence with TDHCA- including training supervisory staff, preparing responses, tracking deadlines, who-is-who at TDHCA, CMTS overview, and TDHCA rules.

2. The HKP Director of Compliance shall serve as a liaison between the third-party compliance agent and the owner for all Texas file issues (example: eligibility-related compliance). The HKP Regional Maintenance Supervisor under the Regional Vice President of Property Management will serve as a liaison between the third party compliance agent and the owner for all Texas physical-related compliance issues. In addition to the compliance oversight provided by the third party compliance agent, the HKP Director of Compliance will provide a second layer of review of move-in files before any prospective resident is permitted to move in, and all re-certifications.

We respectfully request that given the improvement in the HKP performance over the last two years, and even since the last PPR, the EARAC consider recommending the award of tax credits for #19094 and #19095, subject to these conditions, with the expiration date for Condition #1 being changed to July 1, 2020. These conditions will keep us focused on improving the correction of non-compliance issues on our properties, and especially the importance of responding to the Compliance Division during the Corrective Action Period. In furtherance of this objective, HKP has two Texas-based employees charged with oversight and compliance of HKP's portfolio of properties in the State of Texas, both of whom have extensive industry experience, and more specifically with specialized knowledge of TDHCA rules and regulations. Patricia Hensley resides in Austin and is HKP's Director of Compliance for the State of Texas and Southern Region. Regina Churman resides in the Dallas/Ft. Worth area and is HKP's Regional Manager assigned to operational oversight of HKP's portfolio of properties in the State of Texas. Both Patricia and Regina joined HKP last year and have been instrumental in improving HKP's compliance and property management services to its portfolio of properties in the State of Texas.

Thank you for giving us the opportunity to dispute the appropriateness of a recommendation to deny awards to HKP and its affiliates. We sincerely believe that our firm has improved its performance

within the State of Texas and we look forward to continuing with our efforts to provide Texans with well-maintained and well-managed affordable housing opportunities.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'JK', with a long horizontal flourish extending to the right.

Jeffrey L. Kittle
President & CEO

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee regarding Riverwood Commons II (19179)

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

WHEREAS, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

WHEREAS, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio, with a minimum of three events of non-compliance;

WHEREAS, in the case of application Riverwood Commons II (19179), the sponsors of the application (JES Holdings) have five properties in their portfolio, meaning that if they have the minimum three Events of Noncompliance not corrected during the Corrective Action Period, they would be classified as a Category 3;

WHEREAS, JES Holdings had seven events of noncompliance that were not corrected within the 90-day corrective action period, exceeding the minimum number of three events, and exceeding 50% of the number of properties in the Combined Portfolio;

WHEREAS, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3;

WHEREAS, on June 3, 2019, the Department notified the Applicant of the determination of their Category 3 status, and the Applicant then timely filed a dispute to EARAC as permitted under 10 TAC §1.303(g), and EARAC as permitted by rule, elected to not hear the dispute prior to presenting this matter to the Board;

WHEREAS, the portfolio and Events of Noncompliance associated with JES Holdings were approved in the past by the Board with conditions, those conditions have been satisfied,

and no new events of noncompliance have been identified to date that would suggest any change in performance since the prior approval;

WHEREAS, Tex. Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance, however, the Board must fully document and disclose any instances in which the Board approves a project application despite any noncompliance; and

WHEREAS, Staff requests the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions, because this portfolio was approved in the past by the Board with conditions, those conditions have been satisfied, and no new events of noncompliance have been identified;

NOW, therefore, it is hereby

RESOLVED, that the Board has considered the compliance history of the Applicant, and determines, for application Riverwood Commons II (19179), that the Applicant's compliance history as documented and disclosed herein should not preclude a positive recommendation from EARAC; and

FURTHER RESOLVED, that the Application is authorized to proceed through its remaining evaluation and scoring, and proceed to EARAC for review and consideration of recommendation and possible conditions, without being precluded from a positive recommendation by EARAC because of its compliance history.

BACKGROUND

The Compliance Division monitors each property at least once every three years. After a monitoring visit, a report is sent to the owner identifying the Events of Noncompliance (if applicable). A 90-day corrective action period is provided, which can be extended for good cause if a request is made during the corrective action period. Tex. Gov't Code §2306.6719 provides that events of noncompliance that are corrected during the applicable corrective action period are disregarded for the purposes of assessing an applicant's compliance history when applying for funding. All correspondence between the Compliance Division and the Development is conducted through the Department's web-based Compliance Monitoring and Tracking System (CMTS). All the events of noncompliance discussed in this agenda item are now corrected, but were not corrected during their allowable corrective action period.

JES Holdings Events of Noncompliance include:

- Violations of the Uniform Physical Condition Standards (cited at one property)
- Noncompliance with Affirmative Marketing requirements (cited at two properties)
- Noncompliance with social service requirements (cited at one property)
- Noncompliance with utility allowance requirements (cited at one property)
- Noncompliance with lease requirements (cited at one property)

- Failure to provide tenant income certification and documentation (cited at one property)

The assessment of compliance history is performed by the Compliance Division in accordance with the rules set out at 10 TAC §1.301, which define the level or “category” of compliance an applicant or affiliate has achieved. Under 10 TAC §1.301(e)(3), Category 3 is defined. Under 10 TAC §1.301(f)(3), following a process of how an Applicant may provide evidence or comment regarding the accuracy of the categorization, “if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award.”

Under the EARAC rule found at 10 TAC §1.303(c):

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award. . . .

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section. . . .

Accordingly, by rule, if an applicant or affiliate is considered by the Compliance Division to be a Category 3, and evidence and comment submitted do not change that designation, then the Compliance Division must recommend to EARAC denial of the award. In turn, EARAC cannot make a positive recommendation, and must recommend against the award because of the negative recommendation of the Compliance Division (as a required member of EARAC) if “the material requirement cannot be cured through one of the conditions . . . listed in Subsection (e).”

On July 26, 2018, after considering these Events of Noncompliance, a different application of this applicant was recommended for award by EARAC with conditions under the prior Previous Participation Review Rule and was approved by the Board. All of the conditions that had been placed on the portfolio in association with the award in July 2018 have now been met. In the past this set of circumstances – in which no new events have occurred, approval of another award associated with the same portfolio has been granted, and conditions have been met - would historically have resulted in a positive recommendation by Compliance to EARAC. However, as detailed, above, the current Previous Participation Rule requires the Compliance Division to recommend denial of the award as the Portfolio is classified as a Category 3.

It should be noted that the applicant’s dispute included a detailed legal analysis which is attached to this Board Action Request. Staff strongly disagrees with the characterization of differing threshold requirements in different program years as an arbitrary and capricious rulemaking action.



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June 10, 2019

Via Email and Hand Delivery

Texas Department of Housing and Community Affairs
Executive Award and Review Advisory Committee
c/o Brooke Boston
221 East 11th Street
Austin, Texas 78701

Re: Riverwood Commons II (“**Development**”)
Riverwood Commons II, LP (“**Applicant**”)
TDHCA No. 19179

Ladies and Gentlemen:

Our firm represents the Applicant, which is applying for 9% Housing Tax Credits¹ in the 2019 Application Round. Pursuant to 10 TAC §1.303(g)(2)(C), the Applicant is Disputing a negative recommendation by EARAC that the Applicant is not eligible for a Housing Tax Credit award for the Development because the Applicant's compliance history falls into Category 3. Pursuant to 10 TAC §1.303(g)(4), a .pdf version of this letter is being delivered by email, and a hard copy of this letter is being delivered by courier. Further, pursuant to that subsection, the Applicant is requesting to have an authorized representative appear at any meeting held by EARAC to reconsider its recommendation. If EARAC decides to refer this Dispute to the Board, we request consideration at the meeting on June 27.

Background Information

On [date] received an email notification from TDHCA's Compliance Division that, based upon a previous participation review, the Applicant's portfolio was considered to be Category 3 under 10 TAC §1.301(e)(3)(A):

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of properties in the Combined Portfolio

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in Title 10 of the Texas Administrative Code.

The Applicant's portfolio includes five (5) properties, and it has seven (7) corrected Events of Noncompliance. The Compliance Division notified the Applicant of its right to respond pursuant to 10 TAC §1.301(f)(3)(A):

(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

In accordance with the rule, the Applicant submitted written comment, a copy of which is attached as **Exhibit A**.

Based upon 10 TAC §1.301(f)(3)(B), the Applicant received the notification attached as **Exhibit B**. In the notification, the staff cites 10 TAC §1.301(f)(3)(A) for the proposition that, if the Applicant has a Category 3 portfolio, the Compliance Division may not recommend approval to EARAC. The notification goes on to say that, pursuant to 10 TAC §1.301(f)(3)(B), "*It is also not within the authority of EARAC to change Compliance's determination, overrule their determination, or violate this rule.*"

Thus, without ever explicitly saying that EARAC was recommending to the Board that the award be denied, the Applicant was invited to file this Dispute.

Legal Analysis

TDHCA staff is taking the position that, if the Compliance Division is required to make a negative recommendation for denial of an award because an Applicant has a portfolio in Category 3, EARAC cannot make a positive recommendation for approval of the award. This position appears to be based upon 10 TAC §1.303(f)(3)(B), which says:

(B) After review of any corrective action submitted during the seven calendar day period, if the Application is still considered a Category 3, *the Compliance Division will recommend to EARAC denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter. (emphasis added)*

The language of this section is clear that, if an Applicant is in Category 3, the Compliance Division must recommend denial to EARAC. The language is also clear that EARAC will notify

an Applicant if the Compliance Division's final recommendation is for denial, after receiving and reviewing the Applicant's written comments. The rule becomes unclear when it refers to the Applicant's ability to Dispute "the recommendation." It seems to imply that the Applicant can Dispute the Compliance Division's determination or it could be read to imply that, if the Compliance Division makes a negative recommendation, EARAC must also make a negative recommendation. However, such interpretation is not consistent with 10 TAC §1.303 regarding EARAC's function and process. That function and process is described below and is sequential.

- **10 TAC §1.303(a) establishes EARAC:**

to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits

- **10 TAC §1.303(c) describes EARAC's recommendation process. EARAC may make a positive recommendation, a recommendation with conditions, or a negative recommendation. A negative recommendation is made if the Applicant has a violation and the matter cannot be cured with conditions.**

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of all such conditions proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this section, regarding EARAC Disputes.

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought *and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section*. When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification of the Applicant's right to dispute the negative EARAC recommendation as described in Subsection (g) of this section, regarding EARAC Disputes. (emphasis added)

- **10 TAC §1.303(d) expands on subsection (c) with regard to a positive recommendation with conditions. It specifically states that a positive recommendation may be made if an Applicant is in Category 3:**

(d) Conditions to an award may be placed on a single property, a portfolio of properties, or a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this section may be customized to provide specificity regarding affected properties, Persons or dates for meeting conditions.

(1) Applications made and reviewed under §1.301 of this subchapter that are considered a *Category 2 or Category 3* because of any of the following Events of Noncompliance *may be awarded* with the imposition of one or more of the conditions listed in Subsection (e)(1) through (19) of this section: (emphasis added)

- **10 TAC §1.303(g)(2) provides the decisions for which an Applicant can file a Dispute. Note that authority exists only to Dispute a recommendation by EARAC; there is no authority to Dispute a recommendation by the Compliance Division, as suggested in 10 TAC §1.303(f)(3)(B):**

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute consistent with Paragraph (3) of this subsection.

(A) Their category as determined under §1.301(f) of this subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

In the face of regulatory inconsistency, an attempt must be made to harmonize provisions. It is clear that, for the staff's interpretation to prevail, provisions in 10 TAC §1.303 would be rendered ineffective.

- Under 10 TAC §1.303(c)(4), EARAC can make a negative recommendation only if there has been a violation and conditions are incapable of curing the violation. This provision would be rendered moot if 10 TAC §1.301(f)(3)(B) were interpreted to mean that a negative recommendation to EARAC from the Compliance Division automatically means EARAC shall make a negative recommendation.
- Under 10 TAC §1.303(d)(1), EARAC is permitted to make a positive recommendation with conditions for an Applicant in Category 3. This provision would be rendered moot if 10 TAC §1.301(f)(3)(B) were interpreted to mean that a negative recommendation to EARAC from the Compliance Division automatically means EARAC shall make a negative recommendation.
- Under 10 TAC §1.303(g)(2)(C), an Applicant can Dispute a negative recommendation by EARAC; the rule does not permit Dispute of a negative recommendation by the Compliance Division, as suggested in 10 TAC §1.301(f)(3)(B).

The provisions of 10 TAC §1.303 can be harmonized with 10 TAC §1.301(f)(3)(B). Where 10 TAC §1.301(f)(3)(B) states that EARAC will notify an Applicant of a negative recommendation by the Compliance Division "along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter," the reference to a dispute *in accordance with §1.303* is relevant. It incorporates the provisions of §1.303, which specifically allow EARAC to make a positive recommendation with conditions when a property is in Category 3. Thus, 10 TAC §1.301(f)(3)(B) should be understood to read that the "Applicant's right to dispute the negative recommendation" is implemented *if and when* §1.303 results in a negative recommendation from EARAC.

TDHCA's previous participation rules changed in December 2018. At the time of adoption, the staff identified "a need to formalize the process and considerations of EARAC." In particular, staff was concerned with aligning conditions imposed upon awards with identified preferences. The intended result was "a more objective, consistent process for PPR review, and the determinations made by EARAC."²

It is important to note that Applicant applied for Housing Tax Credits for two Developments in the 2018 Application Round. At that time, EARAC recommended to the Board an award of Housing Tax Credits with conditions. See Exhibit C. The award of Housing Tax Credits was made on July 26, 2018. **Since that date, all of the required conditions have been met, and there have been no new findings of Noncompliance with respect to the Applicant.**

While great deference is given to an agency's interpretation of its own rules, a court will intervene and overrule an agency's interpretation when it is arbitrary and capricious. The United States Supreme Court has opined that an agency's interpretation can be arbitrary and capricious when it "does not reflect the agency's fair and considered judgment on the matter in question."³ Against the backdrop of the facts in the immediately preceding paragraph, TDHCA's current interpretation of the new previous participation rules yields an arbitrary and capricious result. It is illogical to conclude that an Applicant found eligible for a Housing Tax Credit award in 2018 would be ineligible for a Housing Tax Credit award in 2019 when none of the underlying conditions have changed and, in fact, certain conditions imposed in 2018 have been successfully met.

Request

We respectfully request that EARAC reconsider the rules and find that it has the authority to take the negative recommendation from the Compliance Division, weigh all the factors, and make a positive recommendation to the Board with conditions. Consistent with the conditions previously imposed, we believe those conditions should be:

The Regional Manager and the Training Coordinator should complete the same training programs in 2019 that they were required to complete in 2018. This is

² Quotations from Board Action Request for December 6, 2018.

³ TALK AMERICA, INC. v. MICHIGAN BELL TELEPHONE CO., 131 S.Ct. 2254 (2011).

Ms. Brooke Boston
June 10, 2019
Page 6

consistent with the conditions that were imposed when an Affiliate of the Applicant received a Housing Tax Credit award in 2018. This condition is consistent with 10 TAC §1.303(e)(9), which is an approved condition for award. It is also consistent with 10 TAC §§1.303(c)(4) and (d)(1), which allow EARAC to recommend a Category 3 Applicant for an award with conditions, if it is likely that such conditions will address the violation. Since TDHCA thought these conditions would address the violation in 2018, it is reasonable to assume that these conditions would address the same violation in 2019.

If EARAC is unwilling to change its recommendation and refers the Dispute to the Board for determination, we respectfully request the Board to exercise its authority found in 10 TAC §1.303(i) to decide that the Applicant should be eligible for a Housing Tax Credit award for the Development:

. . . the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute.

The Board would not be making an award on this date, but rather making a determination that the Applicant is eligible for an award.

If you have any further questions about this submission, please feel free to contact me.

Sincerely,



Cynthia L. Bast

cc: Brian Kimes
Jill Lafferty
John Guttman
Jim Markel

Exhibit A – Applicant Written Response to EARAC

Exhibit B – Notification from EARAC

Exhibit C – Prior HTC Award and Conditions

Exhibit A

Applicant Written Response to EARAC



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May 30, 2019

Executive Award and Review
Advisory Committee
Texas Department of Housing
and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Riverwood Commons II (the "**Development**")
TDHCA No. 19179

Dear EARAC members:

We represent the proposed Development Owner¹, which has applied for Housing Tax Credits in the 2019 Application Round. The Applicant has received notification that, pursuant to the new rules for previous participation, its portfolio is considered Category 3. Section 1.301(f)(3)(B) of the previous participation rules mandates that the Compliance Division recommend to EARAC that EARAC deny the Applicant's request for Housing Tax Credits for the Development. Despite this recommendation from the Compliance Division, we respectfully request that EARAC recommend the Development for a Housing Tax Credit award. We believe EARAC has the authority to make this determination pursuant to Section 1.303(d)(1) of the previous participation rules, which states:

Applications made and reviewed under §1.301 of this subchapter that are considered a Category 2 or Category 3 because of any of the following Events of Noncompliance **may be awarded with the imposition of one or more of the conditions** listed in Subsection (e)(1) through (19) of this section:

The Events of Noncompliance that have resulted in the Applicant's classification in Category 3 are the same seven (7) items, spanning three (3) properties, that were brought in front of EARAC last year, at which time EARAC made a recommendation of award with conditions. The Events of Noncompliance found on Riverwood Commons in 2016 and Settlement Estates in 2017 were based upon a file review.

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in the 2019 Qualified Allocation Plan or previous participation rules, as applicable.

Each owner responded within the corrective action period. However, staff was not satisfied with the response and, under the rules at that time, the owners did not have the 10-day grace period to provide further correction, as included in the rules today. When the owners were advised that their response was insufficient, they provided additional information immediately, and the Events of Noncompliance were cleared.

Events of Noncompliance for Hidden Glen related to a physical inspection in 2017, in which the property received a UPCS score of 96/100. In that instance, the owner failed to provide corrective action during the corrective action period as the result of a communication error. The initial notification from CMTS was sent to the executive vice president of the company. Property management staff was not made aware of the issue until August 16, 2017, about two weeks after the deadline. A satisfactory response was provided to the Department on August 18, and the matter was cleared.

When the Developer applied for Housing Tax Credits in 2018 for Highlander Senior Village, EARAC approved an award, with conditions, based upon these findings. The conditions were that the Regional Manager and Training Coordinator should complete the Texas Apartment Association's Housing Tax Credit Training and review the TDHCA Compliance Training Webinars no later than December 31, 2018. These conditions were met. However, because the Developer is committed to proper compliance, it took additional measures to improve its performance. Specifically, all of its Texas property managers completed the Texas Apartment Association's Housing Tax Credit Training in 2018.

The Developer also changed its oversight procedures after the 2018 previous participation review. An email distribution list was set up in CMTS so that any email correspondence related to compliance would be received by senior level ownership staff, property management staff, and internal compliance staff. This was done to help ensure no items slip through the cracks and full and complete responses are made in a timely manner. Lastly, the Developer engaged Real Page Windsor as a third party reviewer to review its compliance responses for accuracy and completeness.

Since the Developer met the conditions for its 2018 Housing Tax Credit award and implemented additional strategies to improve its compliance performance, no new violations have been identified.

Request

Given that nothing has changed in the Developer's compliance record since it was recommended for a Housing Tax Credit award in 2018, that the Developer has met the conditions imposed by staff, and that the Developer has gone beyond the requisite conditions to improve its compliance program, it would be inequitable and unreasonable for EARAC to decline an award for this Development in 2019. Moreover, the previous participation rules allow EARAC to make an affirmative award recommendation, with conditions, in these instances. The Applicant believes that the following conditions to a 2019 Housing Tax Credit award would be appropriate:

- Section 1.303(e)(9) -- The regional manager and training coordinator continue to attend and review trainings until the Developer's portfolio is at Category 2 or below.

May 30, 2019

Page 3

- Section 1.303(e)(7) – The Developer will continue to follow and provide documentation of an established email distribution group in CMTS.
- Sections 1.303(e)(2) or (4) -- A qualified 3rd party will perform either a onetime review or a quarterly review of the Developer's files until the portfolio is at Category 2 or below.

If EARAC requires any further information or would like to visit with the Applicant, please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Cynthia L. Bast".

Cynthia L. Bast

cc: Brian Kimes
Jim Markel
Jill Lafferty
John Guttman

Exhibit B

Notification from EARAC

From: John Guttman <jguttman@jesholdings.com>
Sent: Monday, June 3, 2019 4:42 PM
To: Jo En Taylor <joen.taylor@tdhca.state.tx.us>; Patricia Murphy <patricia.murphy@tdhca.state.tx.us>
Cc: Brian Kimes <bkimes@jesmith.com>; Jill Lafferty <jlafferty@jesholdings.com>; Jim Markel <jmarkel@aepartners.com>; Bast, Cynthia L. <CBast@lockelord.com>; Homero Cabello <homero.cabello@tdhca.state.tx.us>; Brooke Boston <brooke.boston@tdhca.state.tx.us>
Subject: RE: EARAC RESULTS_RE: Previous Participation Review for Application 19179

Patricia,

We could use some clarification from Jo's email. Has the PPR for this application gone before EARAC and EARAC has made a determination, or is this email only stating the Compliance Department's determination of a Category 3 and recommendation of denial to EARAC?

Also, which rule is the following sentence referring to? "It is also not within the authority of EARAC to change Compliance's determination, overrule their determination, or violate this rule." I assume this is in reference to §1.301? It is my understand after reading §1.303 that §1.303(d)(1) gives EARAC the ability to consider a Category 3 for award with conditions.

Thank you,



John Guttman
Development Manager

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From: Jo En Taylor [<mailto:joen.taylor@tdhca.state.tx.us>]
Sent: Monday, June 03, 2019 4:09 PM
To: John Guttman
Cc: Brian Kimes; Jill Lafferty; Jim Markel; Bast, Cynthia L.; Patricia Murphy; Homero Cabello; Brooke Boston
Subject: EARAC RESULTS_RE: Previous Participation Review for Application 19179

The Compliance Division has conducted a thorough review of the compliance history and response submitted for **19179 (Riverwood Commons II)** and determined that the results of the previous participation review (PPR) remained a **Category 3**. 10 TAC 1.301(f)(3)(B) states that: "After review of any corrective action submitted during the seven calendar day period, if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award." It is not within the

authority of the Compliance Division to make an affirmative recommendation to EARAC because of this language in the PPR rule.

On June 3, 2019, the Executive Award Review Advisory Committee (“EARAC”) was notified of the denial by Compliance. 10 TAC 1.301(f)(3)(B) goes on to state that: *“EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter.”*

The summary identified five (5) properties in the combined portfolio and a total of seven (7) Corrected Events of Noncompliance. The previous participation review (PPR) process identified the application as a Category 3 in accordance with 10 TAC §1.301(e)(3)(A):

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of properties in the Combined Portfolio;

10 TAC §1.303(g) provides an opportunity to dispute the EARAC recommendation. If you wish to, you must do so in writing to the attention of the Chair of EARAC (Brooke Boston at brooke.boston@tdhca.state.tx.us). It is also not within the authority of EARAC to change Compliance’s determination, overrule their determination, or violate this rule. Please refer to the following rule for more information regarding the appeal process: [Texas Administrative Code §1.303](#)

Any written dispute of the recommendation must be submitted no later than **5PM, June 10, 2019**. The response submitted to the Department during the PPR Category notification period (received on 5/30/19) can be accepted by the Department as your formal appeal and included for Board consideration; however, if you wish to submit a different response, or additional information for consideration, please do so by the designated date. This item will be presented to the Board at their meeting on **June 27, 2019**.

Please feel free to contact me or Patricia Murphy at patricia.murphy@tdhca.state.tx.us if you have any questions regarding this matter.

Jo En Taylor

Senior Compliance Administrator, Compliance
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.0250
Fax: 512.475.3359

Exhibit C

Prior HTC Award and Conditions

SUPPLEMENTAL BOARD BOOK OF JULY 26, 2018



J. B. Goodwin, Chair
Leslie Bingham Escareño, Vice-Chair
Paul Braden, Member
Asusena Reséndiz, Member
Sharon Thomason, Member
Leo Vasquez, III, Member

App #	Name	Conditions from EARAC
18000	Evergreen at Garland	<p>1. If awarded NSP and/or HOME funds the Owner is required to ensure that the designated Labor Standard Officer (LSO) complete the Department's pre-construction conference, and provide a certification of completion to the Direct Loan Administrator no later than March 1, 2019.</p> <p>2. The Executive Director, for good cause, may grant one extension for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.</p>
18002	Evergreen Basswood	<p>1. If awarded NSP and/or HOME funds the Owner is required to ensure that the designated Labor Standard Officer (LSO) complete the Department's pre-construction conference, and provide a certification of completion to the Direct Loan Administrator no later than March 1, 2019.</p> <p>2. The Executive Director, for good cause, may grant one extension for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.</p>
18018	Columbia Renaissance	<p>1. Correction of uncorrected "Household income above limit upon initial occupancy" Event of Noncompliance at Columbia Luxar (ID 1824-97167) within 30 days following lease expiration but no later than April 1, 2019 and evidence of correction provided no later than May 1, 2019.</p> <p>2. The Executive Director, for good cause, may grant one extension for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.</p>
<p>18019</p> <p>18026</p>	<p>Highlander Senior Village</p> <p>Maple Park Senior Village</p>	<p>1. Owner is required to ensure that the Regional Manager and Training Coordinator complete the trainings listed and provide TDHCA with a certification of attendance and/or completion no later than December 31, 2018.</p> <p>(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; and</p> <p>(B) Review of the TDHCA Compliance Training Webinars:</p> <ul style="list-style-type: none"> (i) 2012 Supportive Services Webinar Video; (ii) How to identify and properly implement Supportive Services; (iii) 2013 Annual Owner's Compliance Report (AOCR) Webinar Video; (iv) 2015 Tenant Selection Criteria Webinar Video; (v) 2015 Tenant Selection Criteria Presentation; (vi) 2015 Tenant Selection Criteria- Q and A's; (vii) §10.610 – Tenant Selection Criteria; (viii) 2015 Affirmative Marketing Requirements Webinar Video; (ix) 2015 Affirmative Marketing Requirements Presentation; (x) 2015 Affirmative Marketing Requirements- Q and A's; <p>2. The Executive Director, for good cause, may grant one extension for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.</p>
18081	Pathways at Chalmers Courts East	<p>1. Correction of uncorrected "Failure to resolve final construction deficiencies" Event of Noncompliance at The Reserve at Springdale (ID 5082-15408) by November 1, 2018.</p> <p>2. The Executive Director, for good cause, may grant one extension for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.</p>

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Chaparral Apartments (19228)

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

WHEREAS, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

WHEREAS, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio, with a minimum of three events of non-compliance;

WHEREAS, in the case of application Chaparral Apartments (19228), the sponsors of the application (Michaels Communities) have five properties in their portfolio, meaning that if they have the minimum three Events of Noncompliance not corrected during the Corrective Action Period, they would be classified as a Category 3;

WHEREAS, Michaels Communities had four events of noncompliance that were not corrected within the 90 day corrective action period, exceeding the minimum number of three events, and exceeding 50% of the number of properties in the Combined Portfolio;

WHEREAS, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3;

WHEREAS, on June 3, 2019, the Department notified the Applicant of the determination of their Category 3 status, and the Applicant then timely filed a dispute to EARAC as permitted under 10 TAC §1.303(g), and EARAC as permitted by rule, elected to not hear the dispute prior to presenting this matter to the Board;

WHEREAS, the portfolio and Events of Noncompliance associated with Michaels Communities were approved in the past by the Board with conditions, those conditions

have been satisfied, and no new events of noncompliance have been identified to date that would suggest any change in performance since the prior approval;

WHEREAS, Tex Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance, however, the Board must fully document and disclose any instances in which the Board approves a project application despite any noncompliance; and

WHEREAS, Staff requests the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions, because this portfolio was approved in the past by the Board with conditions, those conditions have been satisfied and no new events of noncompliance have been identified to date;

NOW, therefore, it is hereby

RESOLVED, that the Board has considered the compliance history of the Applicant to date, and determines, for Chaparral Apartments (19228), that the Applicant's compliance history as documented and disclosed herein should not preclude a positive recommendation from EARAC; and

FURTHER RESOLVED, that the Application is authorized to proceed through its remaining evaluation and scoring, and proceed to EARAC for review and consideration of recommendation and possible conditions, without being precluded from a positive recommendation by EACAC because of its compliance history.

BACKGROUND

The Compliance Division monitors each property at least once every three years. After a monitoring visit, a report is sent to the owner identifying the Events of Noncompliance (if applicable). A 90 day corrective action period is provided, which can be extended for good cause if a request is made during the corrective action period. Tex. Gov't Code §2306.6719 provides that events of noncompliance that are corrected during the applicable corrective action period are disregarded for the purposes of assessing an applicant's compliance history when applying for funding. All correspondence between the Compliance Division and the Development is conducted through the Department's web-based Compliance Monitoring and Tracking System (CMTS). All the events of noncompliance discussed in this agenda item are now corrected, but were not corrected during their allowable corrective action period.

Michaels Communities Events of Noncompliance include:

- Development failed to meet additional State rent and occupancy restrictions (cited at one property)
- Noncompliance with Affirmative Marketing requirements (cited at one property)
- Household income above the income limit upon initial occupancy (cited at one property)
- Violations of the Uniform Physical Condition Standards (cited at one property)

The assessment of compliance history is performed by the Compliance Division in accordance with the rules set out at 10 TAC §1.301, which define the level or “category” of compliance an applicant or affiliate has achieved. Under 10 TAC §1.301(e)(3), Category 3 is defined. Under 10 TAC §1.301(f)(3), following a process of how an Applicant may provide evidence or comment regarding the accuracy of the categorization, “if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award.”

Under the EARAC rule found at 10 TAC §1.303(c):

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award. . . .

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section. . . .

Accordingly, by rule, if an applicant or affiliate is considered by the Compliance Division to be a Category 3, and evidence and comment submitted do not change that designation, then the Compliance Division must recommend to EARAC denial of the award. In turn, EARAC cannot make a positive recommendation, and must recommend against the award because of the negative recommendation of the Compliance Division (as a required member of EARAC) if “the material requirement cannot be cured through one of the conditions . . . listed in Subsection (e).”

For a different application, on January 27, 2019, EARAC recommended this applicant for award with conditions, after considering these Events of Noncompliance, under the prior Previous Participation Review Rule, and the award was approved by the Board. All of the prior conditions that had been placed on the Portfolio have now been met. Historically, this is a scenario that would typically have resulted in a positive recommendation by Compliance to EARAC. However, as detailed, above, the current Previous Participation Rule requires the Compliance Division to recommend denial of the award as the Portfolio is classified as a Category 3.

It should be noted that the applicant’s dispute included a detailed legal analysis and approximately 300 pages of back up from the actual monitoring visits. These records of monitoring visits are not relevant to the analysis presented to the Board, and only the cover letters have been included with this Board Action Request to protect personally identifiable information of the residents. Staff strongly disagrees with the characterization of differing threshold requirements in different program years as an arbitrary and capricious rulemaking action.



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June 10, 2019

Via Email and Hand Delivery

Texas Department of Housing and Community Affairs
Executive Award and Review Advisory Committee
c/o Brooke Boston
221 East 11th Street
Austin, Texas 78701

Re: Chaparral Apartments (“**Development**”)
Midland Chaparral Associates, LLC (“**Applicant**”)
TDHCA No. 19228

Ladies and Gentlemen:

Our firm represents the Applicant, which is applying for 9% Housing Tax Credits¹ in the 2019 Application Round. Pursuant to 10 TAC §1.303(g)(2)(C), the Applicant is Disputing a negative recommendation by EARAC that the Applicant is not eligible for a Housing Tax Credit award for the Development because the Applicant's compliance history falls into Category 3. Pursuant to 10 TAC §1.303(g)(4), a .pdf version of this letter is being delivered by email, and a hard copy of this letter is being delivered by courier. Further, pursuant to that subsection, the Applicant is requesting to have an authorized representative appear at any meeting held by EARAC to reconsider its recommendation. If EARAC decides to refer this Dispute to the Board, we request consideration at the meeting on June 27.

Background Information

On May 24, 2019, the Applicant received an email notification from TDHCA's Compliance Division that, based upon a previous participation review, the Applicant's portfolio was considered to be Category 3 under 10 TAC §1.301(e)(3)(A):

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of properties in the Combined Portfolio

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in Title 10 of the Texas Administrative Code.

The Applicant's portfolio includes five (5) properties, and it has four (4) corrected Events of Noncompliance, all of which received a response during the Corrective Action Period. The Compliance Division notified the Applicant of its right to respond pursuant to 10 TAC §1.301(f)(3)(A):

(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

In accordance with the rule, the Applicant submitted written comment, a copy of which is attached as **Exhibit A**.

Based upon 10 TAC §1.301(f)(3)(B), the Applicant received the notification attached as **Exhibit B**. In the notification, the staff cites 10 TAC §1.301(f)(3)(A) for the proposition that, if the Applicant has a Category 3 portfolio, the Compliance Division may not recommend approval to EARAC. The notification goes on to say that, pursuant to 10 TAC §1.301(f)(3)(B), "*It is also not within the authority of EARAC to change Compliance's determination, overrule their determination, or violate this rule.*"

Thus, without ever explicitly saying that EARAC was recommending to the Board that the award be denied, the Applicant was invited to file this Dispute.

Legal Analysis

TDHCA staff is taking the position that, if the Compliance Division is required to make a negative recommendation for denial of an award because an Applicant has a portfolio in Category 3, EARAC cannot make a positive recommendation for approval of the award. This position appears to be based upon 10 TAC §1.303(f)(3)(B), which says:

(B) After review of any corrective action submitted during the seven calendar day period, if the Application is still considered a Category 3, *the Compliance Division will recommend to EARAC denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter. (emphasis added)*

The language of this section is clear that, if an Applicant is in Category 3, the Compliance Division must recommend denial to EARAC. The language is also clear that EARAC will notify an Applicant if the Compliance Division's final recommendation is for denial, after receiving and reviewing the Applicant's written comments. The rule becomes unclear when it refers to the Applicant's ability to Dispute "the recommendation." It seems to imply that the Applicant can Dispute the Compliance Division's determination or it could be read to imply that, if the Compliance Division makes a negative recommendation, EARAC must also make a negative recommendation. However, such interpretation is not consistent with 10 TAC §1.303 regarding EARAC's function and process. That function and process is described below and is sequential.

- **10 TAC §1.303(a) establishes EARAC:**

to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits

- **10 TAC §1.303(c) describes EARAC's recommendation process. EARAC may make a positive recommendation, a recommendation with conditions, or a negative recommendation. A negative recommendation is made if the Applicant has a violation and the matter cannot be cured with conditions.**

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of all such conditions proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this section, regarding EARAC Disputes.

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought *and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section.* When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification of the Applicant's right to dispute the negative EARAC recommendation as described in Subsection (g) of this section, regarding EARAC Disputes. (emphasis added)

- **10 TAC §1.303(d) expands on subsection (c) with regard to a positive recommendation with conditions. It specifically states that a positive recommendation may be made if an Applicant is in Category 3:**

(d) Conditions to an award may be placed on a single property, a portfolio of properties, or a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this section may be customized to provide specificity regarding affected properties, Persons or dates for meeting conditions.

(1) Applications made and reviewed under §1.301 of this subchapter that are considered a *Category 2 or Category 3* because of any of the following Events of Noncompliance *may be awarded* with the imposition of one or more of the conditions listed in Subsection (e)(1) through (19) of this section: (emphasis added)

- **10 TAC §1.303(g)(2) provides the decisions for which an Applicant can file a Dispute. Note that authority exists only to Dispute a recommendation by EARAC; there is no authority to Dispute a recommendation by the Compliance Division, as suggested in 10 TAC §1.303(f)(3)(B):**

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute consistent with Paragraph (3) of this subsection.

(A) Their category as determined under §1.301(f) of this subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

In the face of regulatory inconsistency, an attempt must be made to harmonize provisions. It is clear that, for the staff's interpretation to prevail, provisions in 10 TAC §1.303 would be rendered ineffective.

- Under 10 TAC §1.303(c)(4), EARAC can make a negative recommendation only if there has been a violation and conditions are incapable of curing the violation. This provision would be rendered moot if 10 TAC §1.301(f)(3)(B) were interpreted to mean that a negative recommendation to EARAC from the Compliance Division automatically means EARAC shall make a negative recommendation.
- Under 10 TAC §1.303(d)(1), EARAC is permitted to make a positive recommendation with conditions for an Applicant in Category 3. This provision would be rendered moot if 10 TAC §1.301(f)(3)(B) were interpreted to mean that a negative recommendation to EARAC from the Compliance Division automatically means EARAC shall make a negative recommendation.

- Under 10 TAC §1.303(g)(2)(C), an Applicant can Dispute a negative recommendation by EARAC; the rule does not permit Dispute of a negative recommendation by the Compliance Division, as suggested in 10 TAC §1.301(f)(3)(B).

The provisions of 10 TAC §1.303 can be harmonized with 10 TAC §1.301(f)(3)(B). Where 10 TAC §1.301(f)(3)(B) states that EARAC will notify an Applicant of a negative recommendation by the Compliance Division "along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter," the reference to a dispute *in accordance with §1.303* is relevant. It incorporates the provisions of §1.303, which specifically allow EARAC to make a positive recommendation with conditions when a property is in Category 3. Thus, 10 TAC §1.301(f)(3)(B) should be understood to read that the "Applicant's right to dispute the negative recommendation" is implemented *if and when* §1.303 results in a negative recommendation from EARAC.

TDHCA's previous participation rules changed in December 2018. At the time of adoption, the staff identified "a need to formalize the process and considerations of EARAC." In particular, staff was concerned with aligning conditions imposed upon awards with identified preferences. The intended result was "a more objective, consistent process for PPR review, and the determinations made by EARAC."²

It is important to note that Applicant applied for Housing Tax Credits in 2018. At that time, EARAC recommended to the Board an award of Housing Tax Credits with conditions. See **Exhibit C**. The award of Housing Tax Credits was made on January 17, 2019, just six (6) months ago. **Since that date, all of the required conditions have been met, and there have been no new findings of Noncompliance with respect to the Applicant.**

While great deference is given to an agency's interpretation of its own rules, a court will intervene and overrule an agency's interpretation when it is arbitrary and capricious. The United States Supreme Court has opined that an agency's interpretation can be arbitrary and capricious when it "does not reflect the agency's fair and considered judgment on the matter in question."³ Against the backdrop of the facts in the immediately preceding paragraph, TDHCA's current interpretation of the new previous participation rules yields an arbitrary and capricious result. It is illogical to conclude that an Applicant found eligible for a Housing Tax Credit award in 2018 would be ineligible for a Housing Tax Credit award in 2019 when none of the underlying conditions have changed and, in fact, certain conditions imposed in 2018 have been successfully met.

Request

We respectfully request that EARAC reconsider the rules and find that it has the authority to take the negative recommendation from the Compliance Division, weigh all the factors, and

² Quotations from Board Action Request for December 6, 2018.

³ TALK AMERICA, INC. v. MICHIGAN BELL TELEPHONE CO., 131 S.Ct. 2254 (2011).

make a positive recommendation to the Board with conditions. Consistent with the conditions previously imposed, we believe those conditions should be the following for this Development:

(1) Applicant is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the Development. These persons shall include the property manager's Head of Compliance, Senior Vice President, and Texas Regional Manager. This is consistent with the condition that was imposed when an Affiliate of the Applicant received a Housing Tax Credit award in January 2019. This condition is consistent with 10 TAC §1.303(e)(5), which is an approved condition for an award.

(2) Applicant agrees to establish and maintain an email distribution group in CMTS and include the property manager's head of Compliance, Compliance Clerk, Regional Vice President, and Texas Regional Manager to ensure that all responsible parties receive notification of any uploads and will facilitate a timely response to any identified issues. This is consistent with the condition that was imposed when an Affiliate of the Applicant received a Housing Tax Credit award in January 2019. This condition is consistent with 10 TAC §1.303(e)(7), which is an approved condition for an award.

(3) Applicant is prepared to add a condition that the on-site manager for this Development will undertake any training listed in 10 TAC §1.303(e)(9)(A)-(D) that TDHCA believes is appropriate.

All of these conditions are also consistent with 10 TAC §§1.303(c)(4) and (d)(1), which allow EARAC to recommend a Category 3 Applicant for an award with conditions, if it is likely that such conditions will address the violation. Since TDHCA thought the first two conditions would address the violation six (6) months ago, it is reasonable to assume that these conditions would address the same violation in 2019.

If EARAC is unwilling to change its recommendation and refers the Dispute to the Board for determination, we respectfully request the Board to exercise its authority found in 10 TAC §1.303(i) to decide that the Applicant should be eligible for a Housing Tax Credit award for the Development:


. . . the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute.

The Board would not be making an award on this date, but rather making a determination that the Applicant is eligible for an award.

Ms. Brooke Boston
June 10, 2019
Page 7

If you have any further questions about this submission, please feel free to contact me.

Sincerely,



Cynthia L. Bast

cc: Ryan Zent
Kenneth Crawford
Donna Rickenbacker

Exhibit A – Applicant Written Response to EARAC

Exhibit B – Notification from EARAC

Exhibit C – Prior HTC Award and Conditions

Exhibit A

Applicant Written Response to EARAC

May 30, 2019

Ms. Jo En Taylor
Senior Compliance Administrator
Texas Department of Housing and Community Affairs
221 E 11th Street
Austin, TX 78701

RE: Previous Participation Review for Application 19228

Dear Ms. Taylor:

In response to the findings of the Previous Participation Review ("PPR") conducted in connection with application 19228 (Chaparral Apartments) we have provided a response and additional information for the consideration of the Executive Award Review Advisory Committee ("EARAC").

In response to this PPR we have completed a comprehensive review with our compliance division and their response to the noted events of noncompliance. We have confirmed, with documentation, that once made aware of the noncompliance events at each of these communities we worked quickly and proactively, in collaboration with TDHCA, in order to correct these events in a timely manner. We acknowledge, that in certain cases, these events were not, or were not able to be corrected within the original Corrective Action Period ("CAP"). However, in nearly every instance, we were in communication with TDHCA and were taking steps to correct the events within the CAP.

The Michaels Organization takes immense pride in our Texas communities that we have owned and managed since 2003. These events are, to my knowledge, the first instances of non-compliance, related to income eligibility, experienced during our ownership and all instances were corrected as quickly as possible. In this response, we have provided a detailed account of each event of noncompliance that demonstrates that we corrected the event of noncompliance as quickly as possible, while providing timely responses to TDHCA within the CAP and ultimately cured every instance of noncompliance.

We hope that the evidence provided in this letter, along with our constant communication and continued efforts to better our procedures will provide sufficient evidence to approve the compliance history and allow the application to continue so that we can complete a substantial rehabilitation of Chaparral Apartments, which will continue to provide high quality affordable housing to the families of Midland.

Yale Village Apartments (TDHCA ID#265)

- A monitoring inspection occurred on September 21, 2016, and the management agent, Interstate Realty Management ("IRM") was notified on November 17, 2016 that the review resulted in seven finding of noncompliance, with an initial CAP of February 15, 2017.

- IRM provided a response to the notification within the CAP on January 31, 2017, which IRM believed would be sufficient to close out all of the noted findings of noncompliance. This included providing TDHCA with a corrected TIC and ledgers reflecting that unit #0228 was being charged the accurate rent, which would close out the deficiency noted, "Dev. Failed to meet additional State rent/occ restrictions."
- On April 6, 2017, IRM was notified that the response was sufficient to close out all but one of the noncompliance items, "Dev failed to meet additional state rent/occ restrictions," relating to Unit #0228. The correspondence from TDHCA noted that the documentation submitted within the CAP was not sufficient to correct the finding. Immediately upon receipt of this notification, IRM took steps to correct this issue, including, upon determination of the amount owed, issuing a refund to the affected resident. A formal response and evidence of corrective action was submitted as final response to TDHCA on June 8, 2017, closing out this matter, as evidenced by the closeout letter from TDHCA dated June 15, 2017.
- Evidence of the above referenced correspondence is attached to this letter as **Attachment 1 – Yale Village**. We believe the timeline presented above demonstrates our dedication, good faith, commitment and willingness to work with TDHCA and illustrates that we responded within a timely manner within the CAP. While one issue required additional attention and documentation after the expiration of the CAP, IRM worked closely, and as expeditiously as feasible, to fully address the remaining item of noncompliance.

Times Square on the Hill (TDHCA ID#264)

- Following a monitoring inspection on November 8, 2016, IRM received notification on December 7, 2017 from TDHCA of six findings of noncompliance as a result of the review with a CAP ending March 7, 2017.
- On March 7, 2017 IRM provided a response within the CAP, which IRM believed was sufficient to close out all items of noncompliance.
- On March 31, 2017, IRM was notified that the documentation submitted was sufficient to correct a majority of the noncompliance findings. However, TDHCA noted that sufficient documentation was not provided to close out two of the findings and would require additional follow up.
 - The finding, "NC related to Affirmative Mktng Req," was believed, by IRM to be suspended based on a misunderstanding relating to a memorandum issued by TDHCA in February of 2017 which outlined the suspension of the need to update the Affirmative Marketing Plan every two years. On June 8, 2017, IRM provided TDHCA with evidence of continued marketing to populations identified as least likely to apply, closing out this matter.
 - The final finding, "HH income above limit/Unit not lease to LI HH," was due to an emergency created by a flooded unit resulting in an emergency transfer, requiring the affected household be moved to an available unit in the same

community. Upon the determination of the noncompliance relating to unit #0113 by TDHCA, IRM worked with the affected resident to ensure that the resident was provided suitable housing throughout the emergency relocation. On June 1, 2017, IRM presented the resident with a 30-day notice to vacate. Once the unit was vacated, it was immediately made ready and leased to a qualified household IRM provided documentation to TDHCA which successfully closed out this noncompliance item on August 8, 2017. TDHCA closed this issue on August 22, 2017. This issue was reviewed in depth with both IRM regional leadership and the compliance division at the time and has resulted in IRM establishing better protocols and guidelines to ensure that in these circumstances a unit shall be moved on a temporary basis and the compliance monitoring division shall be notified immediately in order to avoid this issue in the future.

- Evidence of the above referenced correspondence is attached to this letter as **Attachment 2 – Times Square**. We feel as if the timeline presented above demonstrates our dedication and willingness to work with TDHCA and illustrates Michaels commitment to the residents of our communities while responding to complicated issues within a timely manner to TDHCA. In this particular case, extenuating circumstances relating to an emergency relocation led to an extend time to fully correct this item, however, at all times IRM continued to openly communicate with TDHCA regarding their ongoing efforts to correct these items.
- It should be noted that, prior to this PPR, Times Square on the Hill went through a change of ownership on December 20, 2017, as evidenced by the TDHCA Ownership Transfer Request approval December 12, 2017.

Castle Gardens aka Cricket Court (TDHCA #598)

- Following a physical inspection on August 24, 2017 the property was notified of violations of the Uniform Physical Condition Standards with a Corrective Action Period ending December 5, 2017. As reflected in the Observed Deficiencies Report and associated work orders, all corrective actions were put in place by October 17, 2017 with a majority of items being corrected immediately following the inspection.
- Interstate Realty Management (“IRM”) prepared all of the work orders and a summary memo dated December 5, 2017 for submittal to TDHCA, we have attached this memo for your reference. On the same date, IRM attempted to upload the required documentation to clear the deficiencies within the Corrective Action Period and was successful in uploading after several technical issues. Immediately following notification, all required documentation was uploaded again and the corrective actions were processed on December 8, 2017, resulting in the issues being closed, as documented through correspondence from TDHCA on December 21, 2017.
- It should be noted that, prior to this PPR, Cricket Court Apartments went through a change of ownership on May 30, 2018, as evidenced by the TDHCA Ownership Transfer Request approval dated February 9, 2018.

- Evidence of the above referenced correspondence is attached to this letter as **Attachment 3 – Cricket Court**. Although 100% of the work was completed within the CAP (to the benefit of the residents), we acknowledge that the evidence of this correction of the event of noncompliance was not successfully uploaded to TDHCA within the CAP. IRM completed all of the requirements immediately following the inspection and we have reviewed this incident in detail with IRM and have put in place requirements that future incidents of noncompliance will be communicated to TDHCA in a timely manner, well in advance of the end of the CAP in order to avoid this in the future. We have also ensured that all responsible parties at IRM are included on all communication from CMTS to ensure that multiple parties from IRM Leadership, Compliance and Regional Management are all informed immediately of any correspondence from the Department.

Additionally, on January 7, 2019, The Michaels Organization underwent a PPR in conjunction with an application for 4% housing tax credits, application #19408 (previously referred to as #18457). At that time, we provided additional information to the EARAC and proposed several conditions for consideration, EARAC approved our compliance history and the conditions below were placed upon the award of tax credits. We have provided an update to these terms for your consideration as it relates to this application. Additional documentation has been provided as **Attachment 4 – Mission Trail** to provide evidence of the update below:

1. Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to TDHCA LURAs over which the owner has the power to exercise Control. These persons shall include IRM's Head of Compliance, IRM's Senior Vice President, as well as the Texas Regional Manager.

The CMTS account for this project was created in conjunction with the 60-day filing required by TDHCA. Gina Young, the Regional Property Manager for Texas was identified as the Administrator of Accounts for the Camino Real community. Additionally, Ms. Young is the primary contact for each of the communities currently in our portfolio (Kings Row and Yale Village).

2. Owner agrees to establish an email distribution group in CMTS and include IRM's Head of Compliance, Compliance Clerk, Regional Vice President, and Texas Regional Manager for the proposed Development and to maintain up to date to ensure that all responsible parties receive notification of any uploads and will facilitate a timely response to any identified issues.

Within the CMTS system we have identified three individuals which shall receive communication directly from TDHCA via CMTS electronic delivery. These individuals are Gina Young, Regional Property Manager (IRM); Susan Curry, Senior Tax Credit Compliance Manager (IRM); and Sandy Cipollone, Senior Vice President with direct oversight of our communities in Texas. This

distribution will ensure that the multiple responsible parties are notified immediately upon correspondence from TDHCA.

3. Interstate Realty Management will ensure that the community managers associated with the Development will complete the five (5) contracted out Housing Credit courses within the first twelve (12) months of hire. These courses will include the following, through the Housing Credit College (Elizabeth Moreland), or equivalent:
- Housing Credits 101: Compliance Basics
 - Housing Credits 102: Income & Assets
 - Housing Credits 204: Unique Program Rules
 - Housing Credits 205: Income Limits, Rents & UA(s)
 - Housing Credits 245: Site Compliance Specialist

Nesly Segovia, the Community Manager for Yale Village and Kings Row, updated the required trainings on December 10, 2018, evidence of these completed programs was previously provided to TDHCA. Once a Community Manager is identified for Mission Trail at El Camino Real we will ensure that they take the required training immediately upon hiring.

Thank you, and we greatly appreciate the time you have taken to ensure that we fully understand the findings of your review and we appreciate your consideration of our responses and attached documentation which will allow us to continue with our application relating to the rehabilitation of Chaparral Apartments in Midland, Texas.

Please reach out to me at anytime should you require any additional documentation in order to sufficiently close the outstanding items or have any additional questions.

Sincerely,



Ryan Zent
Vice President of Development
The Michaels Development Company
Authorized Representative, Midland Chaparral Associates, LLC
rzent@tmo.com

Enclosure

Cc:
Sharon Gamble, Administrator, 9% Competitive HTC Program, TDHCA
Homero Cabello, Director of Program Controls and Oversight, TDHCA



Patricia Murphy, Director of Compliance, TDHCA
Wendy Quackenbush, Director of Compliance, TDHCA
Kimberlee Schreiber, President, Interstate Realty Management
Sandy Cipollone, Senior Vice President, Interstate Realty Management
Kenneth Crawford, Chief Operating Officer, Michaels Development Company
Joseph Weatherly, Regional Vice President, Michaels Development Company
Donna Rickenbacker, Marque Real Estate Consultants

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on a Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee regarding Commons at St. Anthony's (19232)

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

WHEREAS, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

WHEREAS, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio, with a minimum of three events of non-compliance;

WHEREAS, in the case of application Commons at St. Anthony's (19232), the sponsors of the application (Commonwealth Companies) have four properties in their portfolio, meaning that if they have the minimum three Events of Noncompliance not corrected during the Corrective Action Period, they would be classified as a Category 3;

WHEREAS, Commonwealth Companies had four events of noncompliance that were not corrected within the 90-day corrective action period, exceeding the minimum number of three events, and exceeding 50% of the number of properties in the Combined Portfolio;

WHEREAS, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3;

WHEREAS, on June 3, 2019, the Department notified the Applicant of the determination of their Category 3 status, and the Applicant then timely filed a dispute to EARAC as permitted under 10 TAC §1.303(g), and EARAC as permitted by rule, elected to not hear the dispute prior to presenting this matter to the Board;

WHEREAS, the portfolio and Events of Noncompliance associated with Commonwealth Companies were approved in the past by the Board with conditions, those conditions

have been satisfied, and no new events of noncompliance have been identified to date that would suggest any change in performance since the prior approval;

WHEREAS, Tex. Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance, however, the Board must fully document and disclose any instances in which the Board approves a project application despite any noncompliance; and

WHEREAS, Staff requests the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions, because this portfolio was approved in the past by the Board with conditions, those conditions have been satisfied, and no new events of noncompliance have been identified;

NOW, therefore, it is hereby

RESOLVED, that the Board has considered the compliance history of the Applicant, and determines, for application Commons at St. Anthony's (19232), that the Applicant's compliance history as documented and disclosed herein should not preclude a positive recommendation from EARAC; and

FURTHER RESOLVED, that the Application is authorized to proceed through its remaining evaluation and scoring, and proceed to EARAC for review and consideration of recommendation and possible conditions, without being precluded from a positive recommendation by EARAC because of its compliance history.

BACKGROUND

The Compliance Division monitors each property at least once every three years. After a monitoring visit, a report is sent to the owner identifying the Events of Noncompliance (if applicable). A 90-day corrective action period is provided, which can be extended for good cause if a request is made during the corrective action period. Tex. Gov't Code §2306.6719 provides that events of noncompliance that are corrected during the applicable corrective action period are disregarded for the purposes of assessing an applicant's compliance history when applying for funding. All correspondence between the Compliance Division and the Development is conducted through the Department's web-based Compliance Monitoring and Tracking System (CMTS). All the events of noncompliance discussed in this agenda item are now corrected, but were not corrected during their allowable corrective action period.

Commonwealth Companies Events of Noncompliance include:

- Failure to resolve final construction inspection deficiencies (cited at one property)
- Noncompliance with Affirmative Marketing requirements (cited at two properties)
- Violations of the Uniform Physical Condition Standards (cited at one property)

The assessment of compliance history is performed by the Compliance Division in accordance with the rules set out at 10 TAC §1.301, which define the level or “category” of compliance an applicant or affiliate has achieved. Under 10 TAC §1.301(e)(3), Category 3 is defined. Under 10 TAC §1.301(f)(3), following a process of how an Applicant may provide evidence or comment regarding the accuracy of the categorization, “if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award.”

Under the EARAC rule found at 10 TAC §1.303(c):

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award. . . .

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section. . . .

Accordingly, by rule, if an applicant or affiliate is considered by the Compliance Division to be a Category 3, and evidence and comment submitted do not change that designation, then the Compliance Division must recommend to EARAC denial of the award. In turn, EARAC cannot make a positive recommendation, and must recommend against the award because of the negative recommendation of the Compliance Division (as a required member of EARAC) if “the material requirement cannot be cured through one of the conditions . . . listed in Subsection (e).”

The applicant in this matter has provided an explanation for why its issues of non-compliance were not corrected during the corrective action period, and has indicated that they have taken measures to ensure the issues will not be repeated. On July 26, 2018, after considering these Events of Noncompliance, a different application of this applicant was recommended for award by EARAC with conditions under the prior Previous Participation Review Rule, and was approved by the Board. All of the conditions that had been placed on the portfolio in association with the award in July 2018 have now been met. Additionally, there have been no new events of noncompliance identified. In the past this set of circumstances – in which no new events have occurred, approval of another award associated with the same portfolio has been granted, and conditions have been met - would historically have resulted in a positive recommendation by Compliance to EARAC. However, as detailed, above, the current Previous Participation Rule requires the Compliance Division to recommend denial of the award as the Combined Portfolio is classified as a Category 3.

It should be noted that the applicant’s dispute included a detailed legal analysis which is attached to this Board Action Request. Staff strongly disagrees with the characterization of differing threshold requirements in different program years as an arbitrary and capricious rulemaking action.



600 Congress, Suite 2200
Austin, TX 78701
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www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

June 10, 2019

Via Email and Hand Delivery

Texas Department of Housing and Community Affairs
Executive Award and Review Advisory Committee
c/o Brooke Boston
221 East 11th Street
Austin, Texas 78701

Re: Commons at St. Anthony's ("**Development**")
Commons at St. Anthony's, LLC ("**Applicant**")
TDHCA No. 19232

Ladies and Gentlemen:

Our firm represents the Applicant, which is applying for 9% Housing Tax Credits¹ in the 2019 Application Round. Pursuant to 10 TAC §1.303(g)(2)(C), the Applicant is Disputing a negative recommendation by EARAC that the Applicant is not eligible for a Housing Tax Credit award for the Development because the Applicant's compliance history falls into Category 3. Pursuant to 10 TAC §1.303(g)(4), a .pdf version of this letter is being delivered by email, and a hard copy of this letter is being delivered by courier. Further, pursuant to that subsection, the Applicant is requesting to have an authorized representative appear at any meeting held by EARAC to reconsider its recommendation. If EARAC decides to refer this Dispute to the Board, we request consideration at the meeting on June 27.

Background Information

On May 17, 2019, the Applicant received an email notification from TDHCA's Compliance Division that, based upon a previous participation review, the Applicant's portfolio was considered to be Category 3 under 10 TAC §1.301(e)(3)(A):

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of properties in the Combined Portfolio

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in Title 10 of the Texas Administrative Code.

The Applicant's portfolio includes four (4) properties, and it has four (4) corrected Events of Noncompliance. The Compliance Division notified the Applicant of its right to respond pursuant to 10 TAC §1.301(f)(3)(A):

(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC.

In accordance with the rule, the Applicant submitted written comment, a copy of which is attached as **Exhibit A**.

Based upon 10 TAC §1.301(f)(3)(B), the Applicant received the notification attached as **Exhibit B**. In the notification, the staff cites 10 TAC §1.301(f)(3)(A) for the proposition that, if the Applicant has a Category 3 portfolio, the Compliance Division may not recommend approval to EARAC. The notification goes on to say that, pursuant to 10 TAC §1.301(f)(3)(B), "*It is also not within the authority of EARAC to change Compliance's determination, overrule their determination, or violate this rule.*"

Thus, without ever explicitly saying that EARAC was recommending to the Board that the award be denied, the Applicant was invited to file this Dispute.

Legal Analysis

TDHCA staff is taking the position that, if the Compliance Division is required to make a negative recommendation for denial of an award because an Applicant has a portfolio in Category 3, EARAC cannot make a positive recommendation for approval of the award. This position appears to be based upon 10 TAC §1.303(f)(3)(B), which says:

(B) After review of any corrective action submitted during the seven calendar day period, if the Application is still considered a Category 3, *the Compliance Division will recommend to EARAC denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter. (emphasis added)*

The language of this section is clear that, if an Applicant is in Category 3, the Compliance Division must recommend denial to EARAC. The language is also clear that EARAC will notify

an Applicant if the Compliance Division's final recommendation is for denial, after receiving and reviewing the Applicant's written comments. The rule becomes unclear when it refers to the Applicant's ability to Dispute "the recommendation." It seems to imply that the Applicant can Dispute the Compliance Division's determination or it could be read to imply that, if the Compliance Division makes a negative recommendation, EARAC must also make a negative recommendation. However, such interpretation is not consistent with 10 TAC §1.303 regarding EARAC's function and process. That function and process is described below and is sequential.

- **10 TAC §1.303(a) establishes EARAC:**

to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits

- **10 TAC §1.303(c) describes EARAC's recommendation process. EARAC may make a positive recommendation, a recommendation with conditions, or a negative recommendation. A negative recommendation is made if the Applicant has a violation and the matter cannot be cured with conditions.**

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, each of the applicable and required members has not identified a rule or statutory-based impediment (within their area of expertise) that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of all such conditions proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this section, regarding EARAC Disputes.

(4) A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought *and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section*. When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification of the Applicant's right to dispute the negative EARAC recommendation as described in Subsection (g) of this section, regarding EARAC Disputes. (emphasis added)

- **10 TAC §1.303(d) expands on subsection (c) with regard to a positive recommendation with conditions. It specifically states that a positive recommendation may be made if an Applicant is in Category 3:**

(d) Conditions to an award may be placed on a single property, a portfolio of properties, or a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this section may be customized to provide specificity regarding affected properties, Persons or dates for meeting conditions.

(1) Applications made and reviewed under §1.301 of this subchapter that are considered a *Category 2 or Category 3* because of any of the following Events of Noncompliance *may be awarded* with the imposition of one or more of the conditions listed in Subsection (e)(1) through (19) of this section: (emphasis added)

- **10 TAC §1.303(g)(2) provides the decisions for which an Applicant can file a Dispute. Note that authority exists only to Dispute a recommendation by EARAC; there is no authority to Dispute a recommendation by the Compliance Division, as suggested in 10 TAC §1.303(f)(3)(B):**

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute consistent with Paragraph (3) of this subsection.

(A) Their category as determined under §1.301(f) of this subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

In the face of regulatory inconsistency, an attempt must be made to harmonize provisions. It is clear that, for the staff's interpretation to prevail, provisions in 10 TAC §1.303 would be rendered ineffective.

- Under 10 TAC §1.303(c)(4), EARAC can make a negative recommendation only if there has been a violation and conditions are incapable of curing the violation. This provision would be rendered moot if 10 TAC §1.301(f)(3)(B) were interpreted to mean that a negative recommendation to EARAC from the Compliance Division automatically means EARAC shall make a negative recommendation.
- Under 10 TAC §1.303(d)(1), EARAC is permitted to make a positive recommendation with conditions for an Applicant in Category 3. This provision would be rendered moot if 10 TAC §1.301(f)(3)(B) were interpreted to mean that a negative recommendation to EARAC from the Compliance Division automatically means EARAC shall make a negative recommendation.
- Under 10 TAC §1.303(g)(2)(C), an Applicant can Dispute a negative recommendation by EARAC; the rule does not permit Dispute of a negative recommendation by the Compliance Division, as suggested in 10 TAC §1.301(f)(3)(B).

The provisions of 10 TAC §1.303 can be harmonized with 10 TAC §1.301(f)(3)(B). Where 10 TAC §1.301(f)(3)(B) states that EARAC will notify an Applicant of a negative recommendation by the Compliance Division "along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter," the reference to a dispute *in accordance with §1.303* is relevant. It incorporates the provisions of §1.303, which specifically allow EARAC to make a positive recommendation with conditions when a property is in Category 3. Thus, 10 TAC §1.301(f)(3)(B) should be understood to read that the "Applicant's right to dispute the negative recommendation" is implemented *if and when* §1.303 results in a negative recommendation from EARAC.

TDHCA's previous participation rules changed in December 2018. At the time of adoption, the staff identified "a need to formalize the process and considerations of EARAC." In particular, staff was concerned with aligning conditions imposed upon awards with identified preferences. The intended result was "a more objective, consistent process for PPR review, and the determinations made by EARAC."²

It is important to note that Applicant applied for Housing Tax Credits in the 2018 Application Round. At that time, EARAC recommended to the Board an award of Housing Tax Credits with conditions. See **Exhibit C**. The award of Housing Tax Credits was made on July 26, 2018. **Since that date, all of the required conditions have been met, and there have been no new findings of Noncompliance with respect to the Applicant.**

While great deference is given to an agency's interpretation of its own rules, a court will intervene and overrule an agency's interpretation when it is arbitrary and capricious. The United States Supreme Court has opined that an agency's interpretation can be arbitrary and capricious when it "does not reflect the agency's fair and considered judgment on the matter in question."³ Against the backdrop of the facts in the immediately preceding paragraph, TDHCA's current interpretation of the new previous participation rules yields an arbitrary and capricious result. It is illogical to conclude that an Applicant found eligible for a Housing Tax Credit award in 2018 would be ineligible for a Housing Tax Credit award in 2019 when none of the underlying conditions have changed and, in fact, certain conditions imposed in 2018 have been successfully met.

Request

We respectfully request that EARAC reconsider the rules and find that it has the authority to take the negative recommendation from the Compliance Division, weigh all the factors, and make a positive recommendation to the Board with conditions. Consistent with the conditions previously imposed, we believe those conditions should be:

The Regional Property Manager should complete the same training programs in 2019 that were required in 2018. This is consistent with the conditions that were

² Quotations from Board Action Request for December 6, 2018.

³ TALK AMERICA, INC. v. MICHIGAN BELL TELEPHONE CO., 131 S.Ct. 2254 (2011).

Ms. Brooke Boston
June 10, 2019
Page 6

imposed when an Affiliate of the Applicant received a Housing Tax Credit award in 2018. This condition is consistent with 10 TAC §1.303(e)(9), which is an approved condition for award. It is also consistent with 10 TAC §§1.303(c)(4) and (d)(1), which allow EARAC to recommend a Category 3 Applicant for an award with conditions, if it is likely that such conditions will address the violation. Since TDHCA thought these conditions would address the violation in 2018, it is reasonable to assume that these conditions would address the same violation in 2019.

If EARAC is unwilling to change its recommendation and refers the Dispute to the Board for determination, we respectfully request the Board to exercise its authority found in 10 TAC §1.303(i) to decide that the Applicant should be eligible for a Housing Tax Credit award for the Development:

. . . the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute.

The Board would not be making an award on this date, but rather making a determination that the Applicant is eligible for an award.

If you have any further questions about this submission, please feel free to contact me.

Sincerely,



Cynthia L. Bast

cc: Craig Alter
Alyssa Carpenter
Sarah Anderson
Meredith Edwards

Exhibit A – Applicant Written Response to EARAC

Exhibit B – Notification from EARAC

Exhibit C – Prior HTC Award and Conditions

Exhibit A

Applicant Written Response to EARAC



May 21, 2019

Jo En Taylor
Compliance Administrator
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

Previous Participation Review for 19232

Dear Ms. Taylor:

Thank you for the opportunity to respond to the items identified in the Previous Participation Review (PPR) for Application 19232. These items appear to be the same items that were identified in the PPR for Application 18347 with no new events added. We have included the responses for each listed event below, which are the same responses provided during the PPR for Application 18347. We have implemented the procedures described below.

The PPR for Application 18347 placed conditions on that award, which required that the Regional Property Manager for Commonwealth Management Corporation complete Housing Tax Credit Training sponsored by the Texas Apartment Association and review several TDHCA Compliance Training Webinars no later than December 31, 2018. That training was completed and documentation is attached.

Mission Village of Monahans

Event 1: Failure to resolve final construction deficiencies

We responded within the corrective action period and believed that we addressed all final inspection deficiency items, but understand that there was a question on the photographs according to the TDHCA dated 10/13/17. We addressed those items and uploaded the response on 11/22/17 and all issues were resolved by 12/4/17.

While not all items were corrected to TDHCA's satisfaction within the initial corrective action period, we did respond within the CAP and continued to work to resolve issues in a timely manner. The issue here is that the sub-contractor did not use exact measurements when pouring the concrete and the discrepancy was not initially noticed. This will be prevented in the future in two ways: 1) by changing our standard sidewalk specification dimension to a 38" width (so as to allow for small variations in concrete placements); and 2) with better oversight during construction and the Senior Vice President of Construction will review all physical inspection notices and corrections before they are submitted to TDHCA.

Mission Village of Monahans

Event 2: NC related to the Affirmative Marketing reqs in §10.617

This item is the result of the failure of the regional property manager to coordinate the response in a timely manner. Additionally, when the response was submitted, the former regional property manager tasked to complete the plan performed unsatisfactory work. Due to various instances of unresponsiveness and unsatisfactory performance, including this occurrence, the regional property manager has been terminated.

We have identified that this issue occurred due to the lack of a multilevel review and submission verification process. We have since implemented the procedure that all TDHCA responses are coordinated by the Director of Property Management (a newly created and staffed position) and submitted to the Vice President of Property Management at least 2 weeks prior to the due date for review and to ensure submission by the deadline. Additionally, we have implemented the procedure that all Affirmative Marketing Plans will be reviewed and finalized by the Vice President of Property Management and will not be handled by the regional property manager.

Mission Village of Monahans

Event 3: Violations of the Uniform Physical Condition Standards

This item is the result of confusion between the final inspection and UPCS Inspection and a failure of the regional property manager to coordinate the response. Due to various instances of unresponsiveness, including this occurrence, the regional property manager has been terminated.

Correspondence from TDHCA regarding the UPCS Inspection was received shortly after correspondence regarding the Final Inspection. The regional property manager was to coordinate all responses and it is our assumption that the regional property manager did not realize that the UPCS Inspection was different than the Final Inspection and required an additional response.

The Development Owner and Executive Management did not know that the UPCS inspection was unresolved until Cost Certification. When informed of the issue on March 9, 2017, the Development Owner immediately mobilized, resolved the issues, and responded on March 12, 2017. We have identified that this issue occurred due to the lack of a multilevel review and submission verification process. We have since implemented the procedure that all TDHCA responses are coordinated by the Director of Property Management (a newly created and staffed position) and submitted to the Vice President of Property Management at least 2 weeks prior to the due date for review and to ensure submission by the deadline.

Mission Village of Jacksonville

Event 1: NC related to the Affirmative Marketing reqs in §10.617

We believed that we responded to and addressed all deficient items within the corrective action period ending 11/1/17, but understand that not all items were sufficiently corrected per the letter from TDHCA dated 11/2/17. We were informed of the 11/2/17 letter on 11/9/17, and

submitted the corrections on 11/17/17. The Affirmative Marketing Plan was approved 11/17/17.

While not all items were corrected to TDHCA's satisfaction within the initial corrective action period, we did respond within the CAP and continued to work to revolve issues in a timely manner. Both Mission Village of Jacksonville and Mission Village of Monahans had issues related to Affirmative Marketing Plans. In both cases, the former regional property manager tasked to complete the plans performed unsatisfactory work with regard to this and other items, and has since been terminated. Additionally, as a result, we have implemented the procedure that all Affirmative Marketing Plans will be reviewed and finalized by the Vice President of Property Management and will not be handled by the regional property manager.

Sincerely,



Louie A. Lange, III
President



I Molly M Smith completed all training as required per TDHCA Document #18347 Page 5.

I completed Housing Tax Credit Training in Beaumont Texas Sponsored by the TAA on September 19th 2018. The completion certificate is included with this letter.

I reviewed the TDHC Compliance Training Videos out lined in Paragraph G Item 1. (B) on several dates over 4 months. I have broken them down the items reviewed as they are on Page 5. All of the required reading and presentations were reviewed at
(<https://www.tdhca.state.tx.us/pmcomp/presentations.htm>)

July 31st 2018

- (i) 2012 Supportive Services webinar Video
- (ii) How to identify and implement supportive services

September 18th 2018

- (iii) 2015 Tenant Selection Criteria Webinar Video
- (iv) 2015 Tenant Selection Criteria Presentation
- (v) Tennant Selection Criteria Q and A
- (vi) 10.610-Tennant Selection Criteria

November 11th 2018

- (vii) 2015 Affirmative Marketing Requirements Webinar Video
- (viii) 2015 Affirmative Marketing Requirements Presentation
- (ix) 2015 Affirmative Marketing Requirements Q and A

I attest that the dates and activities listed above are true and accurate as of November 12th 2018.

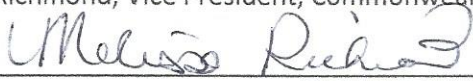
By: Molly M Smith, Director of Property Management, Commonwealth Management Corporation

Signature: _____

A handwritten signature in black ink, appearing to read 'Molly M Smith', written over a horizontal line.

By: Melissa Richmond, Vice President, Commonwealth Management Corporation

Signature: _____

A handwritten signature in black ink, appearing to read 'Melissa Richmond', written over a horizontal line.



The Texas Apartment Association

hereby recognizes that

Molly Smith

has attended
the “HTC Compliance Training” seminar
September 19, 2018 in Beaumont, Texas.

This course has been approved for seven hours of NAA Continuing Education Credits.

A handwritten signature in black ink, appearing to read 'Chris Newton', is positioned above the printed name and title.

Chris Newton
Executive Vice President

Exhibit B

Notification from EARAC

From: Patricia Murphy <patricia.murphy@tdhca.state.tx.us>

Date: Tue, Jun 4, 2019 at 2:25 PM

Subject: RE: EARAC RESULTS_RE: Previous Participation Review of Application 19232

To: Alyssa Carpenter <ajcarpen@gmail.com>

Cc: Jo En Taylor <joen.taylor@tdhca.state.tx.us>, c.alter@commonwealthco.net <c.alter@commonwealthco.net>, Sharon Gamble <sharon.gamble@tdhca.state.tx.us>, Sarah Anderson <sarah@sarahandersonconsulting.com>, Meredith Edwards <meredith@meconsulting.ltd>, Homero Cabello <homero.cabello@tdhca.state.tx.us>, Brooke Boston <brooke.boston@tdhca.state.tx.us>

Correct, since it is a category 3, EARAC cannot recommend award with conditions, but the Board could approve your application and they could impose conditions.

-----Original Message-----

From: Alyssa Carpenter <ajcarpen@gmail.com>

Sent: Tuesday, June 04, 2019 1:22 PM

To: Patricia Murphy <patricia.murphy@tdhca.state.tx.us>

Cc: Jo En Taylor <joen.taylor@tdhca.state.tx.us>; c.alter@commonwealthco.net; Sharon Gamble <sharon.gamble@tdhca.state.tx.us>; Sarah Anderson <sarah@sarahandersonconsulting.com>; Meredith Edwards

<meredith@meconsulting.ltd>; Homero Cabello

<homero.cabello@tdhca.state.tx.us>; Brooke Boston

<brooke.boston@tdhca.state.tx.us>

Subject: Re: EARAC RESULTS_RE: Previous Participation Review of Application 19232

Thank you for the explanation, Patricia!

I am looking at the link to 10 TAC 1.303, and it discusses an "EARAC Recommendation Process" and there is a statement in there that says "(1) Applications made and reviewed under §1.301 of this subchapter that are considered a Category 2 or Category 3 because of any of the following Events of Noncompliance may be awarded with the imposition of one or more of the conditions listed in Subsection (e)(1) through (19) of this section." Does this decision to award a Category 2 or 3 application with conditions not come from EARAC? Is this Application not eligible for this option of an award with conditions? Since there is no change in the PPR events from last year to this year, I am trying understand the difference for this year?

Regards,

Alyssa Carpenter

On Tue, Jun 4, 2019 at 1:36 PM Patricia Murphy

<patricia.murphy@tdhca.state.tx.us> wrote:

Hello Alyssa,

The new EARAC/ Previous Participation rule is very different from the old rule. EARAC does not actually vote on awards. The Compliance Division, Program Area and Real Estate Analysis division review the application to see if there is any statutory or rule based reason why the application cannot be awarded. If any of the three areas discovers a rule based requirement to not recommend award, then the EARAC recommendation is denial. Since your application is classified as a category 3, the Compliance Division must recommend denial.

The dispute will be heard at the June 27, 2019, Board meeting. We have received a response from you during the first seven day period that will suffice as your written dispute. However, if you would like to add anything else, please do so before June 10, 2019.

Thank you for your understanding.

Patricia Murphy

Director of Compliance

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3140

About TDHCA

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit www.tdhca.state.tx.us or the Learn about Fair Housing in Texas page.

-----Original Message-----

From: Alyssa Carpenter <ajcarpen@gmail.com>

Sent: Tuesday, June 04, 2019 7:39 AM

To: Jo En Taylor <joen.taylor@tdhca.state.tx.us>

Cc: c.alter@commonwealthco.net; Sharon Gamble

<sharon.gamble@tdhca.state.tx.us>; Patricia Murphy

<patricia.murphy@tdhca.state.tx.us>; Sarah Anderson

<sarah@sarahandersonconsulting.com>; Meredith Edwards

<meredith@meconsulting.ltd>; Homero Cabello

<homero.cabello@tdhca.state.tx.us>; Brooke Boston

<brooke.boston@tdhca.state.tx.us>

Subject: Re: EARAC RESULTS_RE: Previous Participation Review of
Application 19232

Hi, Jo En:

Has EARAC already discussed this application with regard to the PPR
review? One paragraph says that on June 3, EARAC was informed on the
Compliance denial determination, while another says that "10 TAC

§1.303(g) provides an opportunity to dispute the EARAC recommendation." But I am not clear
when EARAC made a recommendation?

Regards,

Alyssa Carpenter

On Mon, Jun 3, 2019 at 5:10 PM Jo En Taylor <joen.taylor@tdhca.state.tx.us> wrote:

The Compliance Division has conducted a thorough review of the compliance history and response submitted for 19232 (Commons at St. Anthony's) and determined that the results of the previous participation review (PPR) remained a Category 3. 10 TAC 1.301(f)(3)(B) states that: "After review of any corrective action submitted during the seven calendar day period, if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award." It is not within the authority of the Compliance Division to make an affirmative recommendation to EARAC because of this language in the PPR rule.

On June 3, 2019, the Executive Award Review Advisory Committee ("EARAC") was notified of the denial by Compliance. 10 TAC 1.301(f)(3)(B) goes on to state that: "EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter."

The summary identified four (4) properties in the combined portfolio and a total of four (4) Corrected Events of Noncompliance. The previous participation review (PPR) process identified the application as a Category 3 in accordance with 10 TAC §1.301(e)(3)(A):

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and equal or exceed 50% of the number of properties in the Combined Portfolio; 10 TAC §1.303(g) provides an opportunity to dispute the EARAC recommendation. If you wish to, you must do so in writing to the attention of the Chair of EARAC (Brooke Boston at brooke.boston@tdhca.state.tx.us). It is also not within the authority of EARAC to change Compliance's determination, overrule their determination, or violate this rule. Please refer to the following rule for more information regarding the appeal process:

Texas Administrative Code §1.303

Any written dispute of the recommendation must be submitted no later than 5PM, June 10, 2019. The response submitted to the Department during the PPR Category notification period (received on 5/22/19) can be accepted by the Department as your formal appeal and included for Board consideration; however, if you wish to submit a different response, or additional information for consideration, please do so by the designated date. This item will be presented to the Board at their meeting on June 27, 2019.

Please feel free to contact me or Patricia Murphy at patricia.murphy@tdhca.state.tx.us if you have any questions regarding this matter.

Jo En Taylor

Senior Compliance Administrator, Compliance

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.0250

Fax: 512.475.3359

Exhibit C

Prior HTC Award and Conditions

SUPPLEMENTAL BOARD BOOK OF JULY 26, 2018



J. B. Goodwin, Chair
Leslie Bingham Escareño, Vice-Chair
Paul Braden, Member
Asusena Reséndiz, Member
Sharon Thomason, Member
Leo Vasquez, III, Member

App #	Name	Conditions from EARAC
18347	Avenue Commons	<p>1. Owner is required to ensure that the Regional Property Manager, Commonwealth Management Corporation complete the trainings listed and provide TDHCA with a certification of attendance and/or completion no later than December 31, 2018.</p> <p>(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; and</p> <p>(B) Review of the TDHCA Compliance Training Webinars:</p> <ul style="list-style-type: none"> (i) 2012 Supportive Services Webinar Video; (ii) How to identify and properly implement Supportive Services; (iii) 2015 Tenant Selection Criteria Webinar Video; (iv) 2015 Tenant Selection Criteria Presentation; (v) 2015 Tenant Selection Criteria- Q and A's; (vi) §10.610 – Tenant Selection Criteria; (vii) 2015 Affirmative Marketing Requirements Webinar Video; (viii) 2015 Affirmative Marketing Requirements Presentation; (ix) 2015 Affirmative Marketing Requirements- Q and A's; <p>2. The Executive Director, for good cause, may grant one extension for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.</p>



May 21, 2019

Jo En Taylor
Compliance Administrator
Texas Department of Housing and Community Affairs
PO Box 13941
Austin, TX 78711

Previous Participation Review for 19232

Dear Ms. Taylor:

Thank you for the opportunity to respond to the items identified in the Previous Participation Review (PPR) for Application 19232. These items appear to be the same items that were identified in the PPR for Application 18347 with no new events added. We have included the responses for each listed event below, which are the same responses provided during the PPR for Application 18347. We have implemented the procedures described below.

The PPR for Application 18347 placed conditions on that award, which required that the Regional Property Manager for Commonwealth Management Corporation complete Housing Tax Credit Training sponsored by the Texas Apartment Association and review several TDHCA Compliance Training Webinars no later than December 31, 2018. That training was completed and documentation is attached.

Mission Village of Monahans

Event 1: Failure to resolve final construction deficiencies

We responded within the corrective action period and believed that we addressed all final inspection deficiency items, but understand that there was a question on the photographs according to the TDHCA dated 10/13/17. We addressed those items and uploaded the response on 11/22/17 and all issues were resolved by 12/4/17.

While not all items were corrected to TDHCA's satisfaction within the initial corrective action period, we did respond within the CAP and continued to work to resolve issues in a timely manner. The issue here is that the sub-contractor did not use exact measurements when pouring the concrete and the discrepancy was not initially noticed. This will be prevented in the future in two ways: 1) by changing our standard sidewalk specification dimension to a 38" width (so as to allow for small variations in concrete placements); and 2) with better oversight during construction and the Senior Vice President of Construction will review all physical inspection notices and corrections before they are submitted to TDHCA.

Mission Village of Monahans

Event 2: NC related to the Affirmative Marketing reqs in §10.617

This item is the result of the failure of the regional property manager to coordinate the response in a timely manner. Additionally, when the response was submitted, the former regional property manager tasked to complete the plan performed unsatisfactory work. Due to various instances of unresponsiveness and unsatisfactory performance, including this occurrence, the regional property manager has been terminated.

We have identified that this issue occurred due to the lack of a multilevel review and submission verification process. We have since implemented the procedure that all TDHCA responses are coordinated by the Director of Property Management (a newly created and staffed position) and submitted to the Vice President of Property Management at least 2 weeks prior to the due date for review and to ensure submission by the deadline. Additionally, we have implemented the procedure that all Affirmative Marketing Plans will be reviewed and finalized by the Vice President of Property Management and will not be handled by the regional property manager.

Mission Village of Monahans

Event 3: Violations of the Uniform Physical Condition Standards

This item is the result of confusion between the final inspection and UPCS Inspection and a failure of the regional property manager to coordinate the response. Due to various instances of unresponsiveness, including this occurrence, the regional property manager has been terminated.

Correspondence from TDHCA regarding the UPCS Inspection was received shortly after correspondence regarding the Final Inspection. The regional property manager was to coordinate all responses and it is our assumption that the regional property manager did not realize that the UPCS Inspection was different than the Final Inspection and required an additional response.

The Development Owner and Executive Management did not know that the UPCS inspection was unresolved until Cost Certification. When informed of the issue on March 9, 2017, the Development Owner immediately mobilized, resolved the issues, and responded on March 12, 2017. We have identified that this issue occurred due to the lack of a multilevel review and submission verification process. We have since implemented the procedure that all TDHCA responses are coordinated by the Director of Property Management (a newly created and staffed position) and submitted to the Vice President of Property Management at least 2 weeks prior to the due date for review and to ensure submission by the deadline.

Mission Village of Jacksonville

Event 1: NC related to the Affirmative Marketing reqs in §10.617

We believed that we responded to and addressed all deficient items within the corrective action period ending 11/1/17, but understand that not all items were sufficiently corrected per the letter from TDHCA dated 11/2/17. We were informed of the 11/2/17 letter on 11/9/17, and

submitted the corrections on 11/17/17. The Affirmative Marketing Plan was approved 11/17/17.

While not all items were corrected to TDHCA's satisfaction within the initial corrective action period, we did respond within the CAP and continued to work to revolve issues in a timely manner. Both Mission Village of Jacksonville and Mission Village of Monahans had issues related to Affirmative Marketing Plans. In both cases, the former regional property manager tasked to complete the plans performed unsatisfactory work with regard to this and other items, and has since been terminated. Additionally, as a result, we have implemented the procedure that all Affirmative Marketing Plans will be reviewed and finalized by the Vice President of Property Management and will not be handled by the regional property manager.

Sincerely,

A handwritten signature in blue ink that reads "Louie A. Lange, III". The signature is written in a cursive style with a prominent flourish at the end.

Louie A. Lange, III
President



I Molly M Smith completed all training as required per TDHCA Document #18347 Page 5.

I completed Housing Tax Credit Training in Beaumont Texas Sponsored by the TAA on September 19th 2018. The completion certificate is included with this letter.

I reviewed the TDHC Compliance Training Videos out lined in Paragraph G Item 1. (B) on several dates over 4 months. I have broken them down the items reviewed as they are on Page 5. All of the required reading and presentations were reviewed at
(<https://www.tdhca.state.tx.us/pmcomp/presentations.htm>)

July 31st 2018

- (i) 2012 Supportive Services webinar Video
- (ii) How to identify and implement supportive services

September 18th 2018

- (iii) 2015 Tenant Selection Criteria Webinar Video
- (iv) 2015 Tenant Selection Criteria Presentation
- (v) Tennant Selection Criteria Q and A
- (vi) 10.610-Tennant Selection Criteria

November 11th 2018

- (vii) 2015 Affirmative Marketing Requirements Webinar Video
- (viii) 2015 Affirmative Marketing Requirements Presentation
- (ix) 2015 Affirmative Marketing Requirements Q and A

I attest that the dates and activities listed above are true and accurate as of November 12th 2018.

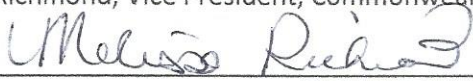
By: Molly M Smith, Director of Property Management, Commonwealth Management Corporation

Signature: _____

A handwritten signature in black ink, appearing to read 'Molly M Smith', written over a horizontal line.

By: Melissa Richmond, Vice President, Commonwealth Management Corporation

Signature: _____

A handwritten signature in black ink, appearing to read 'Melissa Richmond', written over a horizontal line.



The Texas Apartment Association

hereby recognizes that

Molly Smith

has attended
the “HTC Compliance Training” seminar
September 19, 2018 in Beaumont, Texas.

This course has been approved for seven hours of NAA Continuing Education Credits.

A handwritten signature in black ink, appearing to read 'Chris Newton', is positioned above the printed name and title.

Chris Newton
Executive Vice President

BOARD ACTION REQUEST

COMPLIANCE DIVISION

JUNE 27, 2019

Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee regarding DeWetter Apartments (19414), Kathy White Apartments (19415), Nuestra Sonora (19340) and Patriot Place (19344)

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2306.057 requires a compliance assessment to be completed and reported to the Board prior to approving a project for funding;

WHEREAS, 10 TAC, Chapter 1, Subchapter C, related to Previous Participation and Executive Award Review Advisory Committee (EARAC) is the Department's rule and process for making the required assessment and report;

WHEREAS, 10 TAC §1.301(e)(3)(A) classifies a portfolio as a Category 3 if the number of Events of Noncompliance that were not corrected during the Corrective Action Period equals or exceeds 50% of the number of properties in the Combined Portfolio;

WHEREAS, there are 60 properties in the Combined Portfolio for the Housing Authority of the City of El Paso and Miller Valentine, the sponsors of application for 4% tax credit allocations for DeWetter Apartments (19414) and Kathy White Apartments (19415), and in this Combined Portfolio there are 45 events of noncompliance that were not corrected within the 90-day corrective action period, exceeding the 50% benchmark that classifies this Combined Portfolio as a Category 3;

WHEREAS, there are 71 properties in the Combined Portfolio for the Housing Authority of the City of El Paso and Hunt Companies, the sponsors of the application for 9% tax credit allocations for Nuestra Sonora (19340) and Patriot Place (19344), and in this Combined Portfolio there are 47 events of noncompliance that were not corrected within the 90-day corrective action period, exceeding the 50% benchmark that classifies this Combined Portfolio as a Category 3;

WHEREAS, 10 TAC §1.301(f)(3)(B) requires the Compliance Division to recommend denial of the award for any applicant with a portfolio classified as a Category 3; and

WHEREAS, as provided in 10 TAC §1.303(c)(4) related to EARAC recommendations, EARAC is not able to make a positive recommendation when the Compliance Division has recommended denial, the Department notified the Applicant of the determination of

their Category 3 status, and the Applicant then timely filed a dispute to EARAC as permitted under 10 TAC §1.303(g), and EARAC as permitted by rule, elected to not hear the dispute prior to presenting this matter to the Board;

WHEREAS, the combined portfolio and Events of Noncompliance associated with HACEP and Miller Valentine, the sponsors of application for 4% tax credit allocations for DeWetter Apartments (19414) and Kathy White Apartments (19415), were approved in the past by the Board with conditions, but those conditions have not all been satisfied, and events of noncompliance have been identified since the prior approval;

WHEREAS, the combined portfolio and Events of Noncompliance associated with HACEP and Hunt Companies, the sponsors of the application for 9% tax credit allocations for Nuestra Sonora (19340) and Patriot Place (19344), were approved in the past by the Board with conditions, but those conditions have not all been satisfied, and events of noncompliance have been identified since the prior approval;

WHEREAS, Tex. Gov't Code §2306.057(c) provides the Board discretion to approve a project application despite noncompliance, however, the Board must fully document and disclose any instances in which the Board approves a project application despite any noncompliance; and

WHEREAS, Staff does not recommend the Board determine that EARAC may provide a positive award recommendation to the Board with or without conditions, because this portfolio was approved in the past by the Board with conditions, those conditions have not been satisfied, and new events of noncompliance have been identified;

NOW, therefore, it is hereby

RESOLVED, the Board affirms the Category 3 compliance assessment and that Compliance may recommend denial of the award to EARAC, for Dewetter Apartments (19414), Kathy White Apartments (19415), Nuestra Sonora (19340) and Patriot Place (19344).

BACKGROUND

The Compliance Division monitors each property at least once every three years. After a monitoring visit, a report is sent to the owner identifying the Events of Noncompliance (if applicable). A 90-day corrective action period is provided which can be extended for good cause if a request is made during the corrective action period. Tex. Gov't Code §2306.6719 provides that events of noncompliance that are corrected during the applicable corrective action period are disregarded for the purposes of assessing an applicant's compliance history when applying for funding. All correspondence between the Compliance Division and the Development is conducted through the Department's web-based Compliance Monitoring and Tracking System (CMTS). All the events of noncompliance discussed in this agenda item are now corrected, but were not corrected during their allowable corrective action period, for the most

part because no response was received at all during the allowable corrective action period. Of the 43 events of noncompliance associated with the Housing Authority of the City of El Paso (HACEP) portfolio, a total of 26 events of noncompliance had no response submitted during the corrective action period.

HACEP's Events of Noncompliance include:

- Noncompliance with Tenant Selection requirements (cited at eighteen properties)
- Household Income above the income limit upon initial occupancy (cited at three properties)
- Noncompliance with Affirmative Marketing requirements (cited at nine properties)
- Noncompliance with Utility Allowance requirements (cited at one property)
- Noncompliance with lease requirements (cited at seven properties)
- Noncompliance with Social Service requirements (cited at one property)
- Gross rent exceed allowable limits (cited at one property)
- Failure to collect tenant data on an annual basis (cited at one property)
- Violations of the Uniform Physical Condition Standards (cited at two properties)

The applicant has requested that the events of noncompliance noted at Saul Klein Apartments be considered corrected during the corrective action period, and therefore disregarded for previous participation review purposes. This property was monitored on June 28, 2018. The notice of noncompliance was sent on August 29, 2018, and identified five events of noncompliance: Noncompliance with utility allowance requirements, Noncompliance with affirmative marketing requirements, Noncompliance with tenant selection criteria, Noncompliance with lease requirements, and Household income above the income limit upon initial occupancy. The response was due on November 27, 2018.

Prior to allowing a household to move into a tax credit unit, at minimum, the owner must obtain an application, verification of income, an Income Certification form and a lease. During the review, the file for the household living in unit 101 at Saul Klein Apartments was requested. The property was not able to produce a file or any of the required documentation; the finding Household income above income limit upon initial occupancy was cited. On November 26, 2018, the owner representative requested an extension because "eligibility for this household could not be established". The Department granted an extension until February 25, 2019. Despite the fact that the unit was re-occupied by an eligible household on November 30, 2018, the owner representative did not upload the corrective action until February 26, 2019, after the extended due date, speculating that their file was "corrupted" but had been uploaded timely.

In their written dispute, HACEP states "With this portfolio conversion, HACEP is experiencing some growing pains as the organization is changing to keep up with the tremendous overhaul of our housing portfolio." Staff does not recommend disregarding the events of noncompliance at this property because they had ample time to respond. Further, although the new household moved in on November 30, 2018, the documentation submitted shows they did not have the household sign the Income Certification form until January 18, 2019, which is an indication that HACEP does not have proper procedures and controls in place to ensure compliance.

The previous rule regarding previous participation allowed an applicant with the highest Category of a history of noncompliance to still be positively recommended by the Compliance Division to EARAC, and EARAC could recommend an award with conditions. The current previous participation rule does not so provide. Under previous rules, HACEP developed and recommended conditions that were intended to improve its compliance and response timeliness. Despite these conditions, some of which have not been met, seven new events of noncompliance have been identified since the last time they went through a previous participation review, January 7, 2019. Since June of 2016, HACEP has had its awards conditioned ten times for 23 different projects.

Prior HACEP noncompliance was described as “the perfect storm” of employee turnover. HACEP has indicated that the most recent compliance failures are due to transition. The response of May 20, 2019, indicates that HACEP has issued some requests for proposals for professional services in order to support their on-going efforts to improve their asset management and compliance performance.



Housing Authority of the City of El Paso

June 12, 2019

Board Chair and Board Members
Texas Department of Housing and Community Affairs
221 East 11th Street
PO Box 13941
Austin 78711-3941

Re: #19414 DeWetter & #19415 Kathy White;
#19340 Nuestra Sonora & #19344 Patriot Place;
Request to Overrule EARAC Recommendations to Deny Awards.

Chair Goodwin and Board Members:

The Housing Authority of the City of El Paso, Texas (“HACEP”) hereby respectfully requests that the TDHCA Board grant 4% LIHTC awards to DeWetter and Kathy White Apartments and 9% LIHTC awards to Nuestra Sonora and Patriot Place Apartments (to the extent warranted by the 2019 Competitive Tax Credit Program), notwithstanding current Executive Award and Review Advisory Committee (“EARAC”) recommendations. In that respect, HACEP wishes to provide the following information:

A. Previous Participation Review should show Saul Kleinfeld cures as timely.

HACEP disagrees with the Compliance Division’s determination that HACEP failed to timely file its Kleinfeld Project Report and a Dispute under §1.303(g) was filed, requesting that late responses or noncompliances related to the curative action response uploaded on February 26, 2019 be removed from the record. All noncompliance findings on Saul Kleinfeld were corrected before the end of the original corrective action period (“CAP”), with the exception of unit 101. Compliance Division rules require that all noncompliance issues be resolved in one submission. For unit 101 an extension was necessary in order to lease to a qualified tenant. The response for all noncompliance issues was uploaded before the end of the extended CAP, but the upload was not received by the Compliance Division and this malfunction was not discovered until the following day. HACEP’s consultant immediately contacted the Compliance Division when the error was noticed, and it was recommended that HACEP appeal to EARAC that the information was uploaded within the CAP. The acknowledgement that the five noncompliances related to Saul Kleinfeld were timely cured would more properly reflect the compliance-related processes that HACEP has recently implemented to comply with the TDHCA’s compliance monitoring procedures. Through the hiring of capable compliance staff and by working with highly-accredited

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www.hacep.org

4849-6964-2649.v3



consultants, we have spent the last year diligently working to create a robust system of internal controls that has allowed HACEP to identify previous noncompliance issues and most importantly, mitigate any future ones.

B. Portfolio size should be considered in determining compliance history.

HACEP believes that the size of its portfolio and the volume of overall requirements which HACEP has been successfully fulfilling far exceeds the 48 total events of noncompliance currently under consideration. HACEP has operated over the last 80 years in furtherance of its essential governmental function to “manage and operate its housing projects in an efficient manner to enable it to set rentals at the lowest possible rates consistent with providing decent, safe, and sanitary housing and that a housing authority may not construct or operate a project for profit or as a source of revenue to a municipality or county.” (Section 392.004, Tex. Local Gov’t Code). HACEP has received recognitions and awards as one of the outstanding housing authorities in the country. Additionally, in furtherance of its governmental mission, with the support and approval of HUD, HACEP has undertaken an historic effort to convert its entire public housing inventory constructed and operated over the last 80 years for HUD from public housing to affordable investor-owned housing. Specifically, HACEP is in the process of converting over 6,200 public housing units at 45 separate locations to tax credit-funded affordable apartments. In total, this is a \$1.3 billion project that will renovate and re-build the entire public housing stock in El Paso, affecting about 20,000 low income residents.

The key result of this undertaking will be a palpable improvement in the quality of life for our most vulnerable populations. Specifically, the conversion project will provide low-income families and individuals with access to higher-quality housing that is safer, needs less maintenance, has far greater energy efficiency, is more effectively managed, and more aesthetically pleasing. The newly modified or built housing will help remove the perceived stigma too often felt by residents of public housing in our state. Additional benefits include those that contribute to the community’s socioeconomic development, such as improvements to neighborhoods that historically lack new development, addressing urban blight, and the creation of employment opportunities through the construction that accompanies the conversion process. This holistic approach to community building has HUD and housing authorities from across the nation watching HACEP as it completes this process. HACEP presents a sustainable housing model for others to follow for the betterment of public housing apartments throughout Texas and the United States.

As of the date of this letter, HACEP has converted over 5,400 units. This includes: (1) over 3,000 units where construction is complete and the units are occupied, (2) another 1,200 units under construction at this time, and (3) a final group of approximately 1,000 units scheduled to begin construction in 2019 and 2020. Through this process, HACEP has probably placed as many, if not more, tax credit units into service in the past five years than any other single developer in Texas.

C. HACEP has significantly improved its compliance procedures in last year.

One of the primary challenges of a rapid conversion of thousands of public housing units to LIHTC units has been to align the converting properties with the state-law compliance requirements overseen by TDHCA. Despite its 15-year experience owning and managing tax credit apartments in El Paso and 80-year history of successfully managing federally subsidized housing units, the sheer number of units coming on-line presented problems. In 2018, HACEP had some struggles to respond to compliance monitoring reporting requirements of TDHCA. That led to HACEP coming before EARAC and promising that the following actions would be taken to ensure future and continuing compliance:

- Terminating the employment of a key employee who did not recognize the importance of submitting timely and complete reports and updates to TDHCA;
- Retaining a nationally-leading tax credit accounting and compliance firm, Novogradac & Co. LLP (“Novogradac”), to take the lead in overseeing the HACEP’s portfolio’s compliance with TDHCA reporting requirements;
- Retaining third-party consultants with expertise in property management and compliance – Du & Associates, TAG & Associates, and Deval - to guide and oversee the HACEP portfolio concerning property management compliance; and
- Developing a comprehensive compliance monitoring, due diligence, and reporting component with the assistance of Novogradac.

During the last year these promises have been implemented, and HACEP has significantly improved in meeting its reporting and compliance obligations. This improvement is illustrated by this year’s reporting activities, where HACEP completed over 50 reports to THDCA, yet only three (3) reports, or approximately six percent (6%), encountered issues or problems.

D. New versions of §1.301 and §1.303 can have unintended consequences.

We are finding that the new versions of Previous Participation and EARAC Rules §1.301 and §1.303 can have unintended negative consequences that are not only harmful to developers seeking future awards, but to the residents and communities that rely on those developers to provide safe, decent and nice affordable housing. These new Rules became effective December 30, 2018, and are only now being interpreted. If the interpretation is that EARAC is forced to recommend denial of a LIHTC award if Compliance Division has done so, then there may be inadequate consideration of other factors that should be given weight – such as the size of the portfolio, the on-going efforts to increase compliance, the materiality of the noncompliance issues, and the major strides made in learning to resolve noncompliances in a timely fashion. We feel these factors should be taken into consideration in connection with EARAC’s review of HACEP’s applications currently before it.

In this instance, if the Board follows a negative recommendation by EARAC, there could be a massive negative impact on HACEP's ongoing conversion projects. HACEP is in the final stages of its conversion, with a large number of important development projects to occur in 2019. These projects, summarized below, will have tremendous beneficial impact on affordable housing in El Paso and the greater El Paso community. The projects slated for approval and construction this year include the following:

<i>Property (El Paso, Texas)</i>	<i>Units</i>
DeWetter	99
Kathy White	80
Robinson	184
Machuca	122
Salazar	286
Patriot Place	110
Nuestra Senora	90
Total	971

The principal harm that could result would be the loss of tens of millions of dollars for affordable housing projects, to the detriment of low-income families seeking affordable housing and the El Paso community in general. Among other significant harms, denial of the awards could also delay HACEP's completion of the conversion, which is on a strict timeline set by federal law; disrupt a comprehensive and costly relocation plan for the move-outs and move-backs of residents affected by the final conversion projects listed above; and cause HACEP to have to extend the retention of a large team of conversion-specific professionals and consultants who have been retained for the conversion process.

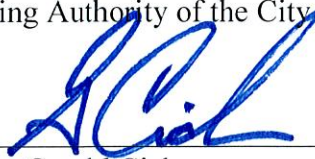
Above all, it would be directly contrary to the goals and purposes of both TDHCA and HACEP for a compliance rating system to be interpreted as tying the hands of both the Compliance Division and EARAC by forcing them to provide negative recommendations to the Board, notwithstanding mitigating factors. We ask that the Board consider those mitigating factors, such as the immense size of the HACEP undertaking, the lack of health and safety violations, and the large strides that have been taken by HACEP to resolve systemic compliance issues. Please avoid derailing future positive development of affordable housing in areas like El Paso, with large populations of low-income families seeking better housing opportunities. This is particularly important to an organization like HACEP, with a long history of successful management of complex housing programs for those in greatest need.

Thank you for considering this request that the Board grant the 4% LIHTC awards for DeWetter and Kathy White Apartments, and the 9% awards for Nuestra Sonora and Patriot Place Apartments to the extent justified by the competitive process. Your support of HACEP's affordable housing mission is most appreciated.

Sincerely,

Housing Authority of the City of El Paso

By:



Gerald Cichon
Chief Executive Officer



JC Development Consulting, LLC

May 31, 2019

Texas Department of Housing and Community Affairs
Attn: JoEn Taylor, Senior Compliance Administrator
221 East 11th Street
Austin, Texas 78701

RE: Response to TDHCA Previous Participation Review dated May 24, 2019
PPR Name: Patriot Place and Nuestra Senora
PPR Number: 19340 and 19344

Dear Ms. Taylor,

Thank you for the opportunity to respond to the issues identified in the PPR of May 24, 2019, relating to the portfolios of the Housing Authority of the City of El Paso (“HACEP”) and Hunt Companies (Hunt). We wish to address the new findings at this time, as the previous findings have all been addressed, and an appeal is currently under review by TDHCA. A copy of the appeal is attached for your reference.

#12152 – Eastside Crossings – Household income above limit: HACEP is the nonprofit partner in this partnership, and does not have control over the property. However, the managing partner has submitted documentation to correct the compliance finding during the corrective action period.

#01425 – Skyway Villas – Noncompliance with social service requirements: this property is from the Hunt portfolio. The asset management company, Alden Torch, submitted documentation to correct the event of noncompliance.

Note that all events of noncompliance have been corrected, and the conditions from prior reviews are being implemented.

Please let us know if you have any additional questions or concerns related to this Previous Participation Response.

Sincerely,

Janna Cormier

Janna Cormier



May 20, 2019

Texas Department of Housing and Community Affairs
Attn: Brooke Boston, Chair of EARAC
221 East 11th Street
Austin, Texas 78701

RE: EARAC Results of Previous Participation Review dated 4/29/19;
PPR Name: DeWetter Apartments and Kathy White Apartments
PPR Number: #19414, #19415

Dear Ms. Boston,

We appreciate the opportunity to highlight the urgency to resolve any issues or concerns regarding the DeWetter and Kathy White Apartments in El Paso.

This letter is written to address three critical points. First, the letter and its attachments provide EARAC with up-to-date information on compliance efforts related to the Previous Participation Review for the portfolio of the Housing Authority of the City of El Paso and its affiliates (“HACEP”). These compliance activities support a change in EARAC’s denial of a neutral recommendation on HACEP’s compliance status. Second, this letter is written to explain the cascade of negative consequences to HACEP’s ongoing federal Rental Assistance Demonstration (“RAD”) conversion for DeWetter and Kathy White if the EARAC denial is not changed. Third, the letter proposes further compliance action by HACEP to mitigate any concerns on EARAC or the Commission’s part regarding the Previous Participation Review related to HACEP.

1. Compliance Activities and Information

As background, the applications for tax credits for the redevelopment of the DeWetter and Kathy White properties was previously approved by the Commission’s Board on November 8, 2018 (as #18433 and #18434). At that time, a number of conditions were in effect from a prior previous participation review, which were continued for the two properties. Attached as **Exhibit A** is an update on those conditions.

Another issue raised by EARAC pertains to the Saul Kleinfeld property. The materials attached as **Exhibit B** pertain to our appeal requesting that the Saul Kleinfeld findings are categorized as being responded to during the corrective action period. The issues that arose in connection with Saul Kleinfeld pertained to a technical issue of uploading the files into CMTS, which was not found until the day after the response was due.



Above all, we ask that you take note that all events of noncompliance have been corrected, and the current PPR shows no open noncompliance issues.

2. Consequences of No Change

The consequences of EARAC not changing its recommendation would be exceptionally significant to HACEP, with the planned closing for the DeWetter and Kathy White rehabilitation projects scheduled in coming weeks.

As background, the RAD financing closing date for these two properties was previously delayed due to the federal government shutdown. Specifically, the federal government shutdown during the December 2018 and January-February 2019 time period caused significant delays by HUD officials who are required to review and approve RAD conversions. Thus, as a result of the shutdown HACEP was required to return and reissue bonds for the two properties. In addition, there were changes to the construction budgets coming out of the lender's plan and cost review. The revised budgets were submitted to TDHCA, and the projects continued the closing process with the HUD RAD office, the Freddie Mac Lender, and the Investor.

At this time we have received the approvals to close these two RAD projects – we have received the RAD Commitment, and will have the Freddie Mac Commitment, and the Syndicator approval within the next two weeks. All parties are proceeding to close as soon as we have TDHCA approval.

Kathy White and DeWetter will be the 35th and 36th HACEP Public Housing properties to be converted through the RAD program within the past five years. With this portfolio conversion, HACEP is experiencing some growing pains as the organization is changing to keep up with this tremendous overhaul of our housing portfolio. Attached as **Exhibit C** is an overview of Recent Compliance History, outlining measures put in place to prevent future events of noncompliance. As evidence of the the results of these measures, of the latest 53 deadlines only 2 were missed. Given the benefit of seeing all that has been done in a relatively short period of time, you will see that we are making great strides.

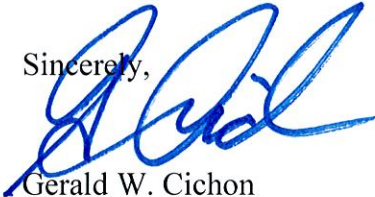
3. Additional Compliance Assurance

As part of our respectful request that EARAC change its recommendation of denial to a neutral recommendation, HACEP is committed to the following improvement to its compliance efforts:

- HACEP has a current contract with a third party entity, Novagradac and Company, LLC to provide oversight of the portfolio to ensure an ongoing compliance effort.
- HACEP has made staffing changes related to the Asset Management function for TDHCA properties.
- Additionally, HACEP's Board recently approved two RFPs for professional services to support our on-going efforts to improve our Asset Management and Compliance performance. On February 27, 2019 HACEP's Board approved the engagement of two third party vendors, Du & Associates and TAG & Associates for Property Management and Consulting Services; and on March 27, 2019 the Board approved engagement of Deval, LLC for Multifamily Compliance Review Services. The Scope of Services under each of these RFPs are attached as **Exhibit D**.
- HACEP is shoring up its internal procedures related to the CMTS interaction to include a weekly review of the system and capture all related correspondence.

Please let us know if you have any additional questions or concerns related to this Previous Participation Response.

Sincerely,



Gerald W. Cichon
Chief Executive Officer

EXHIBIT A – PRIOR CONDITIONS UPDATE

1. The Housing Authority of the City of El Paso (HACEP) or the management company contracted by HACEP is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department by June 30, 2019.

In process and on schedule to be completed prior to the June 30th deadline.

2. HACEP is required to designate the CEO and the Asset Manager to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Developments subject to TDHCA LURAs over which HACEP has the power to exercise control.

There are 3 administrators of accounts: 1) the owner account that is tied to the CEO's email; 2) an admin account for the new HACEP Asset Manager, Joseph Sarrica (see attached request submitted to cmts.requests@tdhca.state.tx.us for support); 3) an admin account for the consultant (currently Novogradac). For the email contact in CMTS, a distribution email (tdhca@hacep.org) is used for both the owner contact and the management company contact.

3. HACEP is required to ensure that the Asset Manager and the Regional Managers (4) attend the training listed in (A) and review the webinar trainings listed in (B) below and provide TDHCA with a certification of attendance for (A) and a certification of completion for (B) no later than December 31, 2018.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association; and

Completed.

(B) Review the TDHCA Compliance Training webinars: **Completed.**

- (i) 2015 Tenant Selection Criteria Webinar Video;
- (ii) 2015 Tenant Selection Criteria Presentation;
- (iii) 2015 Tenant Selection Criteria- Q and A's;
- (iv) §10.610 – Tenant Selection Criteria;
- (v) 2015 Affirmative Marketing Requirements Webinar Video;
- (vi) 2015 Affirmative Marketing Requirements Presentation;
- (vii) 2015 Affirmative Marketing Requirements- Q and A's.

EXHIBIT A – PRIOR CONDITIONS UPDATE

4. HACEP is required to submit the written policies and procedures for all developments subject to a TDHCA LURA for Department review no later than June 30, 2019.

In process and on schedule to be completed prior to the June 30th deadline.

5. HACEP agrees that for future applications submitted through December 31, 2018 a qualified third party accessibility specialist will review the entire development site to confirm compliance with TDHCA accessibility standards and that such documentation be submitted 14 days prior to Board approval.

HACEP has met this condition for all developments during the period for which the condition was applied.

6. The Executive Director, for good cause, may grant one extension of these conditions for up to six months if requested prior to the deadline; any subsequent extensions, or extensions requested after the deadline, must be approved by the Board.

HACEP received a six-month extension to conditions 1 and 4 above.

EXHIBIT B – Saul Kleinfeld Appeal

Saul Kleinfeld: the response to the findings on Saul Kleinfeld was completed before the end of the original CAP, with the exception of unit 101. For unit 101 we received an extension, and uploaded a response before the end of the extended CAP, but apparently the upload did not go through (perhaps a corrupted file?), and we did not discover the incomplete upload until the following day. We resaved and zipped the file in case of any file error, and re-uploaded the response. We immediately contacted TDHCA when we noticed the error, and it was recommended that we appeal to EARAC that the information was uploaded within the CAP.

The timeline for the corrective actions on findings on Saul Kleinfeld is as follows:

- Original CAP ended 11/27/2018
- Received 90 day extension on 11/26/2018 that extended the CAP to 2/25/2019 because of unit 101
- Everything other than unit 101 was corrected prior to 11/26/2018
 - §10.160 Owner Certification executed 11/6/2018
 - §10.613 Owner Certification executed 11/9/2018
 - USR updated with 2018 utility allowances in 11/9/2018
 - Affirmative Marketing finding was corrected prior to the onsite review
 - Tenant Selection Plan updated with an effective date of 11/5/2018
- Unit 101 was occupied with an eligible household 11/30/2018

We have implemented the following process for responding to Corrective Actions:

- Each CAP has a 45 day due date to Novogradac for status review, and another for when the corrective action is due to TDHCA;
- Upon an upload, Novogradac will update the calendar and change the category to “complete” as it changes the color of the calendar event for a visual confirmation
- Once uploaded to CMTS, Novogradac takes a screenshot of the upload for confirmation.

EXHIBIT C – RECENT COMPLIANCE HISTORY

Under the direction of HACEP’s consultant Novogradac and Company, LLC, a national tax credit specialist company, in late November/early December 2018, a shared calendar in Outlook was created for all persons responsible for compliance. The shared calendar was created for the purposes of tracking corrective action deadlines in response to the significant number of reviews being conducted during this time. When TDHCA requested a response for any compliance matter, 2 separate deadlines were added to the calendar. The first calendar event was 45 day after receipt of the correspondence. The second calendar event was the corrective action deadline to TDHCA. An effort was made to reconcile the tracking described above to those notices received prior to the implementation of the calendar.

Starting in August 2018, there have been 13 TDHCA onsite file reviews and 12 corrective action responses related to file reviews.

Property ID	Property Name	Date of Onsite File Review	Corrective Action Deadline (after extension)
1331	Saul Kleinfeld, Ltd.	6/28/2018	2/25/2019
358	Parkside Senior Community	9/25/2018	12/25/2018
1528	Western Pebble Hills, Ltd	9/26/2018	1/6/2019
1529	Western Pellicano, Ltd.	9/26/2018	4/4/2019
4215	Cedar Oak Townhomes	9/26/2018	1/1/2019
5138	Thomas Westfall Memorial Apartments	9/27/2018	2/1/2019
5174	George W. Baines Apartments	9/27/2018	4/3/2019
5139	Sherman Plaza	11/1/2018	2/26/2019
5183	Judson Williams Apartments	11/1/2018	2/13/2019
2168	Western Eastside Seniors, Ltd.	11/2/2018	2/13/2018
1531	Western Gallagher	11/28/2018	no findings
5175	Charles R. Morehead Apartments	11/28/2018	8/3/2019
5184	Father Carlos Pinto Memorial Apartments	11/28/2018	no findings
5182	Rio Grande	3/13/2019	6/11/2019

All corrective action responses have been submitted to TDHCA, including those where the corrective action deadline has not yet passed.

EXHIBIT C – RECENT COMPLIANCE HISTORY

With each TDHCA onsite file review, there is a deadline by which “pre-onsite” documentation must be submitted to TDHCA. Failure to submit such documentation is subject to the finding of noncompliance *Failure to provide pre-onsite documentation*. In each instance, the pre-onsite documentation was submitted by the required deadline.

In addition, there have been 29 UPCS Inspections and 28 corrective action responses related to UPCS Inspections.

Property ID	Property Name	Date of UPCS Inspection	Corrective Action Deadline (after extension)
1331	Saul Kleinfeld, Ltd.	7/9/2018	11/18/2018
5074	Rafael Marmolejo Jr. Memorial Apartments	10/15/2018	2/7/2019
5071	Kennedy Brothers Communities	10/16/2018	3/19/2019
5069	Dwight D. Eisenhower Memorial Apartments	10/17/2018	2/4/2019
135064	Lt. Palmer Baird	10/18/2018	1/29/2019
5073	Lyndon B. Johnson Memorial Apartments	10/18/2018	3/20/2019
5075	Juan Hart Memorial Apartments	10/18/2018	3/20/2019
5066	J.E. Anderson Apartments	11/14/2018	3/11/2019
5067	Everett Alvarez Apartments	11/14/2018	3/11/2019
5138	Thomas Westfall Memorial Apartments	11/15/2018	no findings
5072	Aloysius A. Ochoa Apartments	11/18/2018	no findings
5139	Sherman Plaza	11/26/2018	3/3/2019
5063	Raymond Telles Manor	12/11/2018	3/20/2019
5174	George W. Baines Apartments	12/11/2018	4/17/2019
5065	George Webber Memorial Apartments	12/12/2018	3/26/2019
5070	Woodrow Bean Apartments	12/12/2018	3/21/2019
5175	Charles R. Morehead Apartments	12/12/2018	4/17/2019
5184	Father Carlos Pinto Memorial Apartments	12/12/2018	4/17/2019
5068	Harry S. Truman Apartments	12/13/2018	3/27/2019
358	Parkside Senior Community	12/18/2018	4/7/2019
4215	Cedar Oak Townhomes	12/18/2018	4/29/2019
1528	Western Pebble Hills, Ltd	12/19/2018	4/7/2019

EXHIBIT C – RECENT COMPLIANCE HISTORY

Property ID	Property Name	Date of UPCS Inspection	Corrective Action Deadline (after extension)
1529	Western Pellicano, Ltd.	12/19/2018	4/22/2019
1950	Lee Seniors	12/19/2018	4/24/2019
2168	Western Eastside Seniors, Ltd.	12/19/2018	4/4/2019
1531	Western Gallagher	3/5/2019	6/20/2019
1673	Western Carolina, Ltd.	3/5/2019	6/23/2019
1742	Western Burgundy	3/5/2019	6/25/2019
1745	Western Gallagher II, Ltd.	3/5/2019	6/25/2019
1671	Western Crosby, Ltd.	3/6/2019	6/25/2019

To date, the only UPCS Inspections for which corrective action has not been submitted to TDHCA are for Western Gallagher I (CMTS ID 1531) and Western Carolina (CMTS ID 1673), which are not yet due.

Under Tex. Gov't Code §2306.6719(e), the Compliance Division is unable to consider certain compliance history when making recommendations to EARAC. With respect to our response to this type of recommendation, we believe that it is both relevant and necessary for EARAC to understand the entirety of the owner's experience and not just the narrative created by only focusing on those events not corrected in the corrective action period.

The recent changes to the newly-adopted previous participation rules emphasize timely and accurate responsiveness. To that end, the overall compliance history is extremely relevant. Of the 53 deadlines described above, only 3 were missed. The following is a description of these three instances:

Saul Kleinfeld, Ltd. (CMTS ID 1331):

This onsite occurred 6/28/2018, with an initial corrective action deadline of 11/26/2018. The monitoring letter was uploaded to CMTS by TDHCA on 8/29/2018. All findings of noncompliance were corrected prior to 11/26/2018, except for the finding of noncompliance *Household income above income limit upon initial occupancy / Program Unit not leased to Low-Income household* (unit 101), for which an extension was requested. The corrective action deadline was extended to 2/25/2019. Unit 101 was occupied by an eligible household on 11/30/2018.

In this specific instance, the upload to the CMTS system was attempted in the late afternoon of Monday, 2/25/2019. The following day it was discovered that the upload from the afternoon before was not successful. TDHCA Compliance Division was immediately contacted for guidance on how to proceed for the corrective action to be recognized as received in the corrective action period. While waiting on a response from TDHCA, the corrective action response was resaved, re-zipped and immediately uploaded to CMTS on 2/26/2019.

EXHIBIT C – RECENT COMPLIANCE HISTORY

When Compliance responded, they indicated that there was no mechanism in place to appeal, since no decision or action has been taken with respect to previous participation. Our only recourse would be to file an appeal if we disagreed with an EARAC recommendation. An appeal request was made to EARAC, who indicated that they did not have the authority to grant the appeal.

In this one scenario, we requesting that the response be considered corrected in the corrective action period. All findings were corrected by the deadline, and the failed upload was noticed the next day. We believe this is an example of responsiveness. We, again, ask that this specific issue be considered corrected in the corrective action period. **If Compliance and/or EARAC does not have the authority to consider this appeal, please advise as to who can consider the request.**

We believe that our current tracking and calendar system will mitigate issues like this going forward.

Judson Williams (CMTS ID 5183 and Sherman Plaza (CMTS ID 5139)

While the corrective action deadlines were missed for Judson Williams (CMTS ID 5183) and Sherman Plaza (5139), the error was both identified and rectified prior to TDHCA issuing any correspondence. In March of 2019, we noted that there were a few small, errors with respect to deadlines. These were limited to deadlines in place before the creation of the tracking and calendar system.

To ensure timely responses, a review of all properties in the HACEP portfolio was made and the missed deadlines for Judson Williams (CMTS ID 5183) and Sherman Plaza (5139) were identified. Immediate action was taken.

In summary, HACEP takes its compliance responsibilities very seriously. Since August of 2018, HACEP has met the vast majority of deadlines and has completed its corrective action plans in a timely and responsive manner. We believe HACEP's current tracking and calendar system will mitigate the small number of missed deadlines going forward.

EXHIBIT D – Scope of Services from Recent RFPs:

- Property Management and Consulting Services
- Multifamily Compliance Review Services



Housing Authority of the City of El Paso

Request for Proposals for

Property Management and Consulting Services

The Housing Authority of the City of El Paso, Texas

Solicitation No.

OPS 18-R-0029

<p>Housing Authority of the City of El Paso, Texas</p> <p>Gerald Cichon Chief Executive Officer</p>	<p>An Equal Opportunity Employer and Contracting Agency</p>
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SECTION C

SCOPE OF SERVICES



HACEP has embarked and is currently in the process of converting its Section 9 Conventional Housing public housing properties to the Project Based Rental Assistance (PBRA) & Low-Income Housing Tax Credit Programs through the Department of Housing and Urban Development's Rental Assistance Program (RAD). To ensure a successful conversion and development of post-RAD Asset and Property Management Operations, with the overall goal in maximizing investors investment by creating an operating system that results in optimizing net operating income, a capital program that promotes the long-term value of our properties, and compliance expertise in managing low-income housing tax credits, HACEP is engaging independent contractors to provide asset and property management consulting services. The desired result will be the financial and property management and maintenance operational integration of HACEP's overall residential property portfolio, with the following specific scope and purpose;

- REVIEW CURRENT PROPERTY MANAGEMENT AND MAINTENANCE ORGANIZATIONAL STRUCTURE WITH THE INTENT OF CONSOLIDATING ITS ENTIRE PROPERTY AND RESIDENTIAL PORTFOLIO TO INCLUDE:
 - Supportive Services, and
 - Shared Services
 - Community and Resident Services
 - Protective Services (physical security)
- PROVIDE RECOMMENDATION AND DESIGN A VIABLE BUSINESS MODEL TAKING INTO ACCOUNT BEST PRACTICES WITHIN THE ASSET AND PROPERTY MANAGEMENT PRIVATE INDUSTRY
 - Would include the design of a Property Management Operational Structure, including but not limited to three (3) fundamental and major operating divisions:
 - Asset Management
 - Property Management
 - Compliance
- PROVIDE RECOMMENDATION AND DESIGN A VIABLE PREVENTIVE MAINTENANCE SHORT AND LONG TERM PROGRAM
 - Would include the design of onsite maintenance staff versus 3rd party contractors,
 - Identification of site-maintenance versus 3rd party contracts in relation to the following;
 - Purchase of materials/appliances
 - Plumbing Repairs
 - Electrical Repairs
 - HVAC Repairs
 - Unit-Turn Over-Make Ready Repairs
 - Emergency Calls (during and after hour calls)
 - Grounds/Landscaping



- Carpentry
- Work order call center/s
- Vehicle Fleet Maintenance
- RECOMMEND UNIT TO STAFF PROPERTY MANAGEMENT AND MAINTENANCE RATIOS BASED ON THE OVERALL BUSINESS PLAN DEVELOPED
- ESTABLISH PERFORMANCE METRICS IN ALL AREAS OF THE NEWLY DEVELOPED BUSINESS PLAN PROPOSAL, TO INCLUDE PROPERTY MANAGEMENT SYSTEM AND DASHBOARDS CAPTURING THE FOLLOWING, BUT NOT LIMITED TO, THE FOLLOWING KEY PERFORMANCE INDICATORS;
 - Financial Performance
 - Physical Performance
 - Administrative Performance
 - Compliance Measures – Internal / External
 - Specific Key Performance Indicators should include;
 - Vacancy Turn Over Rate
 - Rent Collection Rate
 - Site Specific Financial Performance – NOI to Budget
 - Occupancy Rates
 - Per Unit Expenses
 - Customer Satisfaction Metrics
 - Employee Satisfaction Metrics
 - Stakeholder Reporting Frequencies
- DEVELOP STANDARD OPERATING PROCEDURES IN ALL ASPECTS OF THE NEWLY DEVELOPED BUSINESS PLAN PROPOSAL, SPECIFICALLY BEST PRACTICES IN THE FOLLOWING INDUSTRY:
 - Project-Based Rental Assistance (HUD-Multi Family)
 - Low-Income Housing Tax Credit
 - Section 9 Conventional Housing
 - Asset Management
 - Property Management
 - Maintenance Operations
 - Long and Short Term Capital Improvement Needs
- DEVELOP SPECIFIC JOB DESCRIPTIONS AND REQUIREMENTS BASED ON THE NEWLY DEVELOPED BUSINESS PLAN MODEL PROPOSAL TO INCLUDE THE FOLLOWING:
 - Job Descriptions
 - Qualifications
 - Certifications
 - Training Program for Development of Talent and Skills



Housing Authority of the City of El Paso

Request for Proposal: Operations
Property Management #: OPS 18-R-0029

The proposal will include an implementation plan with specific timelines and deliverables, based on the needs of HACEP. This would include staffing proposals and needs based on the organizational chart recommended, training and certification requirements, consolidation of current HACEP and HAC operation merger and consolidation of its property management and maintenance staff.

**The Housing Authority of the City of El Paso,
Texas**

Requests for Proposals for:

Multifamily Compliance Review Services

Solicitation No. OPS 18-R-0032

<p>Housing Authority of the City of El Paso, Texas</p> <p>Gerald Cichon Chief Executive Officer</p>	<p>An Equal Opportunity Employer and Contracting Agency</p>
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SECTION C

SCOPE OF SERVICES

The HACEP is seeking proposals for Multi-family compliance auditing and management reviews specific to Low Income Housing Tax Credit ((LIHTC) and Project Based Rental Assistance (PBRA) programs. Qualified firms must show demonstrated experience and ability to provide the required evaluation services.

The objectives of the selected service provider are to assist the HACEP and its affiliates in determining whether the property management staff have received proper training to provide reasonable assurance that it is managing tax credit programs in compliance with applicable laws, regulations, restrictive covenants and extended use agreements.

LIHTC and PBRA Compliance Services Minimum Requirements:

- I. Providing Compliance Monitoring in accordance with Section 42 LIHTC program regulations and guidelines
- II. Monitoring of Section 8 Project Based Rental Assistance for compliance with HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs.
- III. Ensuring compliance with applicable federal and state policies/regulations
- IV. Ensuring proper and timely reporting to proper agencies
- V. Ensuring Low Income Housing Tax Credit Program fundamentals for Rehab projects and all activities associated with LIHTC programs

Specific tasks to be completed:

- 1) General Compliance Consulting and technical assistance, as needed, at the request of staff.
- 2) Programmatic Training and Technical Assistance for both LIHTC and Section 8 Project Based Rental Assistance, as requested by staff.
- 3) LIHTC Reporting/Consulting to include compiling and reviewing reports and advising in accordance with program requirements.
- 4) New Move-in File Review and on-going monitoring of existing tenant compliance as requested by staff.
- 5) Re-certification, Interim file review, or on-going monitoring as required
- 6) File Audit Preparation and Response Consulting, as required by third-party audit, and as needed by staff.
- 7) On-site internal audits of leasing, occupancy, file maintenance and property maintenance as requested by staff.
- 8) Physical Inspection Preparation and response to LIHTC Program required third-party physical inspections, to include HUD required inspections under the Section 8 PBRA Program
- 9) LIHTC Units-Consultant shall review, at minimum, the following aspects in each file prior to move-in and recertification based on federal program regulations:
 - i. Appropriate rent and income limits for set-aside indicated in each file
 - ii. Appropriate utility allowances as long as owner provides current documentation and updates;
 - iii. All household members identified and defined;
 - iv. Third-party verification forms identified by application;
 - v. Appropriate self-certifications identified as necessary in the file:

Compliance Services will include tracking and compliance with the following:

1. LURA, Extended Use Agreement, Regulatory agreements and loan documents review to confirm correct Set-Aside



2. Rent Limits
3. Income Limits
4. Utility Allowances
5. Tax Credit Applications
6. Income and Asset Verifications
7. Annual Recertification
8. Review Apartment Lease for correct Lease Terms
9. Provide Monthly compliance tracking status report for the property outlining status of the assigned file reviews noting issues and outstanding follow up items.
10. All other property specific compliance terms set forth by state housing agency.
11. Monthly/Quarterly/Annual Reporting to state housing agencies.
12. Miscellaneous "LIHTC Compliance" related issues that may arise not identified on this solicitation.

PROPOSAL SUBMISSION

The proposal is limited to the following pages of directly pertinent material, originally produced for this proposal. Items not specifically and explicitly part of the Mandatory Proposal Submittal or referenced therein, e.g., brochures, marketing material, etc., will not be considered.

1. **Executive Summary** – Discuss the highlights of your company(s), key features, and distinguishing points of your proposal, include contact information. (2 page maximum)
2. **Company Profile and Qualifications** - A description of your company(s) and previous experience of a similar nature and size. Include whether the service was for a governmental organization, not-for-profit or for-profit organization. Include a summary of the work performed, the total project cost, the percentage of work the firm was responsible for and the period over which the work was completed. (6 page maximum)
3. **Scope of Services to Be Provided to HACEP** – Identify which of the noted services the firm is proposing on. Establish the Firms' understanding of HACEP's scope, objectives and work requirements and the Firm's ability to satisfy those objectives and requirements. Also include a Fee Schedule for all applicable services. (5 page maximum)
4. **Proposed Staffing** – Provide an organizational chart depicting the organizational structure to support the HACEP account. Provide a list of all key staff that will be assigned to the HACEP account with their titles, qualifications, and area of responsibility. (5 page maximum).
5. **Proposed Staff** – Include the resumes of the staff identified in the organizational structure.
6. **References** – Provide current letter of reference minimum 3 **references**

Cost Proposal - (include as a separate document in a sealed envelope). Provide a price schedule of services requested on the scope of services. Include hourly rates for the various types of services. (3 page maximum).

7a

BOARD REPORT ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Report of Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2019 Qualified Allocation Plan for 19315 Hammack Creek Apartments

BACKGROUND

TDHCA ID#	19315	Development Name:	Hammack Creek Apartments
City:	Kennedale	Region:	3
Requestor:	Thomas E. Huth, Palladium USA		

NOTE: This item was presented to the Board on May 23, 2019. As a result of public comment, the Board directed staff to review its determination for 19315 Hammack Creek Apartments to ensure that the Applicant had provided sufficient evidence that it maintained proper and unbroken site control.

Pursuant to 10 TAC §11.10 of the 2019 Qualified Allocation Plan related to Third Party Requests for Administrative Deficiency (RFAD), an unrelated person or entity may bring new, material information about an Application to staff's attention. Per the requester, it appeared that the site control option agreements submitted by the Applicant may have expired prior to the signing of the contracts. The Application included an exclusive option agreement between Larry Walther and OM Housing, LLC, that would terminate on December 21, 2018, or January 15, 2019, and an exclusive option agreement between Mark Jason Duskocil and OM Housing, LLC, with the same terms. The Application also included a commercial contract between OM Housing, LLC, and KD Hammack Creek Housing, LP, dated February 28, 2019.

Staff had previously identified that the documents submitted did not sufficiently account for the time period between the expiration of the exclusive option agreements (January 15, 2019) and the effective date of the commercial contract (February 28, 2019). Staff issued a deficiency notice on April 23, 2019, and the Applicant responded timely on April 29, 2019. In the response, the Applicant provided documents indicating that both option agreements were extended to January 20, February 20, and February 28. Additionally, the response included a commercial contract between Larry Walther and OM Housing, LLC, dated February 28, 2019, and an agreement of sale and purchase between Mark Jason Duskocil and OM Housing, LLC, dated February 28, 2019.

All submitted documents are attached as exhibits. Staff believes that the Applicant's response sufficiently resolved the deficiency to the Department's satisfaction and no further action is required.

19315

Request for Administrative Deficiency



VIA EMAIL

April 29, 2019

Texas Department of Housing and Community Affairs
Attn: Marni Holloway - Director of Multifamily Finance
Attn: Sharon Gamble – 9% HTC Program Administrator
221 East 11th Street
Austin, TX 78701

RE: TDHCA #19315 – Hammack Creek Apartments

Dear Marni and Sharon:

In accordance with Section 11.10 of the 2019 QAP, Palladium USA is requesting staff to consider whether the matters described in this letter and supporting documentation should be the subject of an Administrative Deficiency. We are also providing a copy to the representative for Application #19315.

In Section 11.204(10) an Applicant is required to submit evidence that the Development Owner has Site Control. The Site Control documents submitted with the Full Application included two option agreements dated 11-07-18 between Larry Walter (Optionor) and OM Housing, LLC (Optionee) and Mark Jason Doscocil (Optionor) and OM Housing, LLC (Optionee). The terms of both Option Agreements are identical. Sections 3(a) of the Option Agreements states “The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a **real estate sales contract** upon terms and conditions mutually acceptable to Optionor and Optionee (Purchase Agreement)”. Section 3(b) states that if the Option is not exercised on or before the “Termination Date” of 01-15-19 or “Early Termination Date” of 12-21-18 then the Option granted shall automatically terminate and be null and void. Please note Section 3(d) of the Option Agreement states the Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Project as long as the Option Agreement is in effect.

The Applicant submitted a Commercial Contract for Unimproved Property on or before the Full Application Delivery Date. The contract submitted was between OM Housing, LLC as the Seller and KD Hammack Creek Housing, LP as the Buyer. Deepak Sulakhe is the President and CEO of OM Housing, LLC as well as a Member of KD Hammack Creek Housing, LP. The Option Contract is only exercisable by the execution and delivery by Optionor and Optionee of a **real estate sales contract** upon terms and conditions mutually acceptable to Optionor and Optionee (Purchase Agreement). Since there is not a real estate contract between Larry Walter and OM Housing, LLC and/or Mark Jason Doscocil and OM Housing, LLC in the Application, the Applicant did not have Site Control at the Full Application submission date. Therefore, the Application for 19315-Hammock Creek Apartments should be terminated.

Additionally, in Section 11.205 an Applicant is required to submit a Market Analysis on or before 04-02-19. The Market Analysis submitted for Application 19315-Hammack Creek Apartments was dated 03-02-18 and prepared by Novogradac for The Reserves at Merriwood Ranch in Garland Texas. The Applicant did not submit the required Market Study for 19315 – Hammack Creek Apartments on or before the required due date and therefore Application for 19315-Hammack Creek Apartments should be terminated.

Should you have any questions or require additional information please contact me. My contact information is below.

Sincerely



Thomas E. Huth
President and CEO
Palladium USA International, Inc.
Phone: 972-774-4400
Fax: 972-774-4484
Email: thuth@palladiumusa.com

Attachments



**TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED
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1. **PARTIES:** Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: OM Housing, LLC
 Address: 5033 Brookview Drive, Dallas, Texas 75220
 Phone: 214.432.7610 Fax: 214.594.9753
 E-mail: dsulakhe@omhousing.com

Buyer: KD Hammack Creek Housing, LP
 Address: 5033 Brookview Drive, Dallas, Texas 75220
 Phone: 214.432.7610 Fax: 214.594.9753
 E-mail: dsulakneemhousing.co

2. **PROPERTY:**

A. "Property" means that real property situated in Tarrant County, Texas at 133 E. Kennedale Pkwy, and 345 & 337 Kennedale Sublet Rd., Kennedale, TX (address) and that is legally described on the attached Exhibit A or as follows:

Approximately 7.964 Acres out of combined 7.764 Acres 113 E. Kennedale PKWY and 8.021 Acres J.B. Renfro Survey Abstract NO. 1260 Tracts 1&2. Generally identified in Exhibit A.

B. Seller will sell and convey the Property together with:
 (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
 (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
 (3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

3. **SALES PRICE:**

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing	\$ <u>1,600,000.00</u>
(2) Sum of all financing described in Paragraph 4	\$ _____
(3) Sales price (sum of 3A(1) and 3A(2))	\$ <u>1,600,000.00</u>

B. Adjustment to Sales Price: (Check (1) or (2) only.)

(1) The sales price will not be adjusted based on a survey.

(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ _____ per:

(i) square foot of total area net area.

(ii) acre of total area net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

(i) public roadways;

(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and

(iii) _____

(c) If the sales price is adjusted by more than _____ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 30 days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

A. Third Party Financing: One or more third party loans in the total amount of \$ _____ . This contract:

(1) is not contingent upon Buyer obtaining third party financing.

(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.

B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____ .

C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ _____ .

5. **EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit \$ 500.00 as earnest money with Stewart Title, Carol Erik (escrow agent) at 17304 Preston Road, Suite 110, Dallas TX (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.

B. Buyer will deposit an additional amount of \$ _____ with the escrow agent to be made part of the earnest money on or before:

(i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or

(ii) see Addendum A & Exhibit B

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Title 365 (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
- (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6C.
- (4) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 120 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's existing survey of the Property dated _____ along with an affidavit required by the title company for approval of the survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a survey acceptable to the title company and deliver the acceptable survey to the Buyer and the title company within 15 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 15 days if necessary for Seller to deliver an acceptable survey within the time required.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 30 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

Commercial Contract - Unimproved Property Concerning _____

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: _____

Items in Section 6.C.

(see Addendum A)

B. Feasibility Period: ¹Buyer may terminate this contract for any reason within 120 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

- (1) Delivery of Property Information: Within 15 days after the effective date, Seller will deliver to Buyer:
- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
 - (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
 - (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
 - (d) copies property tax statements for the Property for the previous 2 calendar years;
 - (e) plats of the Property;
 - (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
 - (g) all communication and/or agreements with public agencies pertaining to the property;
(h) Geotech & Environmental reports, engineering studies, flood plain maps and any other study/report pertaining to the subject property.
- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES: Seller shall retain all funds from short term leases until closing of property.

~~A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:~~

- ~~(1) any failure by Seller to comply with Seller's obligations under the leases;~~
- ~~(2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;~~
- ~~(3) any advance sums paid by a tenant under any lease;~~
- ~~(4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and~~
- ~~(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.~~

~~B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must state:~~

Commercial Contract - Unimproved Property Concerning _____

- ~~(1) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;~~
- ~~(2) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;~~
- ~~(3) the amount of any security deposit;~~
- ~~(4) the amount of any offsets tenant is entitled against rent;~~
- ~~(5) the expiration date of the lease;~~
- ~~(6) a description of any renewal options; and~~
- ~~(7) _____~~

9. BROKERS:

A. The brokers to this sale are:

Cooperating Broker	License No.	Principal Broker	License No.
Address		Address	
Phone	Fax	Phone	Fax
E-mail:		E-mail:	

Cooperating Broker represents buyer.

Principal Broker: *(Check only one box.)*

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

B. Fees. *(Check only one box.)*

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Cooperating Broker a total cash fee of:

_____ % of the sales price.

Principal Broker a total cash fee of:

_____ % of the sales price.

The cash fees will be paid in _____ County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The closing of the sale will be on or before 30 days after the expiration of the feasibility period and subject to extensions provided in Section 12 or within 7 days after objections made under Paragraph 6C have been cured or waived, whichever date is later (the closing date).
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

C. At closing, Seller will execute and deliver, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:

- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
- (2) without any assumed loans in default; and
- (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

D. At closing, Seller, at Seller's expense, will also deliver to Buyer:

- (1) tax statements showing no delinquent taxes on the Property;
- (2) an assignment of all leases to or on the Property;
- (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
- (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
- (5) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
- (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

E. At closing, Buyer will:

- (1) pay the sales price in good funds acceptable to the escrow agent;
- (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
- (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
- (4) sign an assumption of all leases then in effect; and
- (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. ~~Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.~~

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: *(Identify exhibit if special provisions are contained in an attachment.)*

Attached hereto as Addendum A and Exhibit B.

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
 - (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
 - (1) all loan expenses and fees;
 - (2) preparation of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee;
 - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

- A. Prorations:
 - (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
 - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
 - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- B. Rollback Taxes: ~~If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.~~
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- A. If Buyer fails to comply with this contract, Buyer is in default and Seller may:
 - (1) terminate this contract and receive the earnest money as liquidated damages, thereby releasing the parties from this contract; or
 - (2) ~~enforce specific performance, or seek other relief as may be provided by law, or both.~~

as its sole and exclusive remedy



- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey, or commitment, Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as the sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
- (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages, thereby releasing the parties from this contract; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
 - (1) Seller and the sales price will be reduced by the same amount; or
 - (2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
- ~~B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.~~
- ~~C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.~~
- D. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- ~~E. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.~~
- ~~F. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.~~

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.

(TAR-1802) 10-18-05

Initialed for Identification by Buyer *D* and Seller *D*

Page 9 of 12

F. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.

23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.

B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.

C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.

E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.

F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.

G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on 02-28-19, the offer will lapse and become null and void.

Commercial Contract - Unimproved Property Concerning _____

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Buyer: OM Housing, LLC

By: _____

Printed Name: Deepak P. Sulakhe

Title: President / CEO

Buyer: _____

By: _____

Printed Name: _____

Title: _____

Seller: KD Hammock Creek Housing, LP

By: _____

Printed Name: Deepak P. Sulakhe

Title: Member

Seller: _____

By: _____

Printed Name: _____

Title: _____

This is not optioner per the option agreement. Person executing for both buyer and seller is the applicant for 19315 - Hammock Creek

AGREEMENT BETWEEN BROKERS

Principal Broker agrees to pay _____ (Cooperating Broker) a fee of \$ _____ or _____ % of the sales price when the Principal Broker's fee is received. Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Cooperating Broker
By: _____

Principal Broker
By: _____

ATTORNEYS

Buyer's attorney is:
Name: Fielder Nelms
Address: Smith, Stern, Friedman & Nelms, P.C.
14160 Dallas Parkway, Suite 800, Dallas, TX 75254
Phone & Fax: 214-739-0606 / Fax: 214-739-0608
E-mail: fnelms@ssfmlaw.com

Seller's attorney is:
Name: _____
Address: _____
Phone & Fax: _____
E-mail: _____

Buyer's attorney requests copies of documents, notices, and other information:
 the title company sends to Buyer.
 Seller sends to Buyer.

Seller's attorney requests copies of documents, notices, and other information:
 the title company sends to Seller.
 Buyer sends to Seller.

ESCROW RECEIPT

Escrow agent acknowledges receipt of:
 A. the contract on this day February 28, 2019 (effective date);
 B. earnest money in the amount of \$ _____ in the form of _____ on _____

Escrow Agent: Stewart Title Company

Address: 15950 Dallas Parkway, Suite 100
Dallas, TX 75248

Phone & Fax: 214-473-5414 F 833-431-4776

By: Carol Erick
Carol Erick

E-mail: Carol.Erick@Stewart.com

ADDENDUM A

TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

THIS ADDENDUM A TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY is attached to, and made a part of, that Commercial Contract - Unimproved Property (the "**Contract**") executed by **KD Hammack Creek Housing, LP**, a to be formed Texas limited partnership (together with its successors and/or assigns, "**Buyer**"); and **OM Housing, LLC**, a Texas limited liability Company (together with its successors and/or assigns, "**Seller**") (Buyer and Seller are collectively referred to as the "**Parties**", and each a "**Party**"). In the event the terms of this Addendum A conflict with the terms of the Contract, the terms of this Addendum A shall control. All references to the terms "contract" in the Contract shall mean the Contract as amended by this Addendum A.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Feasibility Period.** Paragraph 7.B is hereby deleted in its entirety and replaced with the following:

"Buyer may terminate this contract for any reason on or before August 1st, 2019 (Feasibility Period) by providing Seller written notice of Termination (*Check only one box*)."

2. **Inspections.** Paragraph 7.C(1) is hereby amended by adding the following thereto:

"Such inspections, studies and assessments may include, without limitation, one or more environmental site assessments, including without limitation, borings and other physical samplings."

3. **Leases.** Paragraph 8 is hereby deleted in its entirety and replaced with the following:

"Notwithstanding anything to the contrary set forth in this contract, Seller represents and warrants to Buyer that (a) there are no outstanding written or oral leases in any way affecting the Property, (b) no person or entity has any right with respect to all or any portion of the Property (whether by option to purchase, right of first refusal, contract or otherwise) that may prevent or interfere with Buyer taking title to, and exclusive possession of, all of the Property at closing, and (c) Seller shall not enter into any new lease with respect to the Property during the pendency of this contract without Buyer's prior written consent, which may be given or withheld by Buyer in Buyer's sole and absolute discretion." This shall not apply to any mineral lease contracts. Minerals are not being conveyed.

4. **Closing.** Paragraph 10 is hereby amended by adding the following:

"**Extensions.** Buyer shall have the right to extend the closing date for one (1) additional periods (1) from August 1st, 2019 to September 1st 2019. Buyer must request the extension period by delivering (a) written notice thereof to Buyer, and (b) a \$500.00 Extension Payment to escrow agent, prior to the expiration of the feasibility period. The Extension Payments shall be applicable to the purchase price at closing (see Exhibit B)."

Buyer:  Seller: 

5. **Rollback Taxes.** Paragraph 14.B in hereby deleted and replaced with the following:

"**Rollback Taxes.** If the sale contemplated hereby, a change in the use of the Property, or denial of any special use valuation of the Property would result in the assessment after the closing of additional taxes and interest applicable to the period of time before the closing ("**Rollback Taxes**"), then Seller shall give a credit to Buyer at the closing for 100% of the amount of the Rollback Taxes (including interest and penalties) that may be assessed after the closing as reasonably estimated by the title company, and Buyer shall be responsible for the payment of the Rollback Taxes (including interest and penalties) if and when assessed after the closing. There will be no subsequent adjustment notwithstanding whether the actual Rollback Taxes assessed after the closing differ from the estimate used at the closing. If any Rollback Taxes are due before the closing due to Seller's change in use of the Property or a denial of a special use valuation of the Property, then Seller shall pay those Rollback Taxes (including any interest and penalties) at or before the closing."

6. **Default.** Paragraph 15.B(1) is hereby deleted and replaced with the following:

"(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7.B(1), together with Seller's reimbursement of Buyer's reasonable out-of-pocket expenses incurred in connection with its due diligence inspection of the Property, as Buyer's sole remedy; or"

7. **Material Facts.** Paragraph 19.B is hereby amended by adding the following:

"(11) any proposed special assessments or condemnation; pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel; and

(12) any existing or proposed plans to widen, modify or realign any street adjoining or adjacent to the Property, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads.

Seller shall fully disclose to Buyer, promptly upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the closing date that may affect the representations and warranties set forth above. The representations and warranties of Seller contained herein shall survive the closing and delivery of the Deed."

8. **Notices.** Paragraph 20 is hereby amended by adding the following:

"Notices sent by facsimile and/or e-mail shall not be effective until the sending party receives confirmation that the notice has been received by the receiving party."

9. **Feasibility Period.** Subject to the terms of Paragraph 7.B(1) of the Contract, the earnest money shall be disbursed by escrow agent to Buyer if Buyer gives written

notice to escrow agent on or before the end of the feasibility period, stating that Buyer has terminated the Contract. Such notice by Buyer shall be conclusive evidence of Buyer's right to receive the earnest money. Seller and Buyer irrevocable instruct escrow agent to disburse the earnest money to Buyer upon receipt of said notice, without any other written authorization and without further verification of the party entitled to receive the earnest money. Seller and Buyer agree to indemnify and hold escrow agent harmless for making any disbursement in an attempt to comply with the provisions hereof. Escrow Agent may rely upon any document or copy which it believes to be genuine, may assume that the Party executing any document is authorized to do so, and shall not be liable for anything, which it in good faith, may or may not do in connection herewith.

10. **Closing Conditions**. In addition to any other conditions set forth in the Contract, Buyer shall not be obligated to close this transaction and purchase the Property unless each of the following are either timely satisfied or waived by Borrower in writing:

a. **Subdivided**. At or prior to closing, if the Property is part of a larger parcel belonging to Seller, the Property shall be subdivided from the larger parcel and/or platted. Conversely, if Property is part of several smaller parcels belonging to Seller, the Property shall be combined into a single parcel and/or platted.

b. **Utilities**. Prior to closing, Buyer shall have received utility will-serve letters confirming that all necessary utilities are available in sufficient capacity to service the Property for its intended purpose without unusual or extraordinary expense to Buyer other than standard "tap in" fees.

c. **Governmental Approvals**. Prior to closing, Buyer shall have received all necessary and customary governmental approvals necessary for Buyer to develop and operate the Property for its intended purpose, including without limitation, those for utilities, zoning, special uses, building construction, site construction and off-site improvements (such as road widening easements and permits from applicable departments of transportation, and ingress/egress easements), and/or approval of a final site plan for the proposed development along with utility commitments and required capacity for the intended number of units. All such approvals, permits and allocations, and any conditions imposed thereon, must be acceptable to Buyer in its sole discretion

d. **Zoning**. At closing the Property shall be zoned to permit the development of the Property for Buyer's intended purpose.

In the event that any condition precedent in this Section 10 is not satisfied by the date specified in this Section 10, Buyer shall have the right to terminate the Contract by delivering written notice thereof to Seller, and Buyer shall receive a full and prompt refund of the earnest money (less the independent consideration referenced in Paragraph 7.B(1) of the contract), together with accrued interest thereon, without the need for Seller's consent for its release.

Buyer:  Seller: 

11. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows:

a. **No Notices.** Seller has not received any notice of, and to the best of its knowledge there are no (i) proposed special assessments or condemnation; (ii) pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel.

b. **Access.** Seller has not received notice of any existing or proposed plans to widen, modify or realign any street adjoining or adjacent to the Property, and the Property has full and free access to and from public highways, streets and roads. Seller has no knowledge of any pending or threatened proceeding by any governmental authority, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads

c. **Utility Availability.** Public water, sanitary and storm sewer, electricity, gas, and other required utilities (i) are available to the Property in quantities sufficient for the successful operation of the Property for its intended purpose; (ii) enter the Property through adjoining public streets or, if passing through adjoining private land, do so in accordance with recorded public or private easements; and (iii) are serviced and maintained by the appropriate public or quasi-public entity.

d. **Utility District.** The Property is not situated in a utility or other statutorily created district providing water, sewer, drainage or flood control facilities and services.

e. **Pipelines.** There are no transportation pipelines, including without limitation, pipelines for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product or hazardous substance, located on, under or within the Property.

f. **Owners' Association.** The Property is not subject to mandatory membership in a property owners' association.

g. **Litigation.** There is no pending or threatened litigation, arbitration, administrative action or examination, claim or demand whatsoever related to the Property; and no attachments, execution proceedings, liens, assignments or insolvency proceedings are pending or threatened against Seller of the Property or contemplated by Seller.

Seller shall fully disclose to Buyer, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the closing date that may affect the representations and warranties set forth above. The representations and warranties of Seller contained herein shall survive the closing and delivery of the Deed.

12. **Plans and Approvals.** Buyer shall have the right to file, at Buyer's expense, any and all applications and plans necessary to obtain building permits, any rezoning or subdivision (or the vacation of any existing subdivision or plat) and/or any other agreement, assurance, approval or permit from any and all governmental authorities having jurisdiction

Buyer:  Seller: 

over the Property that Buyer deems appropriate in connection with the intended purpose of the Property. Seller agrees to join in the execution of any application required in order to obtain any such agreement, assurance, permit or approval (or file such application individually if the relevant governmental authority shall so require). Seller further agrees to cooperate with Buyer or its nominee in all respects, including without limitation, attending and giving favorable testimony at any hearings on the petitions or applications, meeting with and providing information to public and private utilities and governmental and quasi-governmental entities, and otherwise working to obtain the agreements, assurances, approvals and permits required by Buyer or its nominee without additional cost or obligation to Buyer or its nominee.

13. **Survey.** Seller agrees to credit the purchase price in the amount of \$5,000, if and only if property closes, at closing to reimburse Buyer for the cost of the survey.

14. **Financing.** Buyer shall have the right to terminate the Contract if Buyer does not secure financing on terms acceptable to Buyer in Buyer's sole and absolute discretion, by delivering written notice thereof to Seller, and Buyer shall receive a full and prompt refund of the earnest money (less the independent consideration referenced in Paragraph 7.B(1) of the Contract), together with accrued interest thereon, without the need for Seller's signature for its release.

15. **Right to Terminate.** Subject to the terms of other terms of the Contract regarding disbursement of the earnest money, Buyer shall have the right to terminate the Contract at any time prior to closing.

16. **Effect of Termination.** The Contract shall be void and of no further force and effect upon any proper termination under the terms of the Contract (other than terms that specifically provide that they survive termination of the Contract).





Buyer:  Seller: 

EXHIBIT A

Legal Description

(to be attached)

Buyer:  Seller: 

LEGAL DESCRIPTION

BEING 7.964 acres of land situated in the J.B. RENFRO SURVEY, ABSTRACT No. 1260, City of Kennedale, Tarrant County, Texas, being a portion of those certain tracts of land described in deed as Tract 1, Tract 3 and Tract 4, to Larry Walker, recorded in Instrument Number D212279455, County Clerk's Records, Tarrant County, Texas, a portion of that certain tract of land described in to Larry M. Walker, recorded in Volume 9632, Page 257, Deed Records Tarrant County, Texas, a portion of that certain tract of land described in deed as Tract 1 and Tract 2, recorded in Clerk's File Number D212048802, County Clerk's Records, Tarrant County, Texas, and a portion of those certain tract of land described in deed to Mark J. Doskocil, recorded in Instrument Number D214158488 and D214158489, County Clerk's Records, Tarrant County, Texas, said 7.964 acres being more particularly described as follows:

COMMENCING at a point at the northwest corner of that certain tract of land described in deed to Mark J. Doskocil, recorded in Clerk's File Number D214158488, County Clerk's Records, Tarrant County, Texas and being the northeast corner of that certain tract of land described in deed to Melvin Uselton and wife, Margaret Uselton, recorded in Volume 5146, Page 152, Deed Records, Tarrant County, Texas, said COMMENCING POINT being (per deed call) S 61°48'24" E, distance of 505.44 feet from the southeast corner of Lot 4-R, Block J, CRESTDALE ADDITION, an Addition to the City of Kennedale, Tarrant County, Texas, according to the Plat recorded in Volume 388-12, Page 21, Plat Records, Tarrant County, Texas;

THENCE S 07°43'55" W, along the common line of said Doskocil and Uselton tracts, a distance of 7.64 feet to the POINT OF BEGINNING and most northerly northwest corner of the herein described 7.964 acre tract, said BEGINNING POINT having a State Plane, NAD 83, Zone 4202 (Grid) coordinate value of NORTH:6921217.807 and EAST:23622806.596, for reference;

THENCE N 87°40'04" E, leaving said common line, across said Doskocil tract (recorded in D214158488), a distance of 141.10 feet to a point;

THENCE S 03°40'20" E, crossing the common line of said Doskocil tracts (recorded in D214158488 and D214158489), and continuing, in all, a distance of 166.89 feet to a point;

THENCE S 68°22'12" E, across said Doskocil tract (recorded in D214158489), a distance of 59.87 feet to a point;

THENCE, S 21°37'48" W, continuing across said Doskocil tract (recorded in D214158489), a distance of 18.00 feet to a point;

THENCE, S 68°22'12" E, continuing across said Doskocil tract (recorded in D214158489) a distance of 67.01 feet to a point;

THENCE, S 25°29'12" W, continuing across said Doskocil tract (recorded in D214158489), a distance of 28.47 feet to a point;

THENCE, S 68°17'14" E, continuing across said Doskocil tract (recorded in D214158489), a distance of 202.48 feet to a point in the northwesterly line of Kennedale-Sublett Road, being at the beginning of a curve to the right, whose radius is 605.31 feet and whose long chord bears S 36°39'32" W, a chord distance of 180.23 feet;

THENCE along the northwesterly line of said Kennedale-Sublett Road, as follows:

Along said curve in a southwesterly direction, through a central angle of 17°07'24", an arc distance of 180.90 feet to a point;
 S 45°13'30" W, a distance of 464.00 feet to a point at the beginning of a curve to the right, whose radius is 225.04 feet and whose long chord bears S 59°40'38" W, a chord distance of 112.30 feet;
 Along said curve in a southwesterly direction, through a central angle of 28°53'45", an arc distance of 113.50 feet to a 1/2" iron rod found in the southerly west line of said Doskocil tract (recorded in D214158489) and being the southeast corner of said Larry Walker Tract 2 (recorded in D212048802) for the most southerly corner of the herein described 7.964 acre tract;

THENCE, N 08°31'21" E, along the common line of said Doskocil tract (recorded in D214158489) and said Larry Walker Tract 2 (recorded in D212048802), along the approximate centerline of a creek, a distance of 242.81 feet to a point;

THENCE, N 03°59'13" E, continuing along the common line of said Doskocil tract (recorded in D214158489) and said Larry Walker Tract 2 (recorded in D212048802), continuing along the approximate centerline of said creek, a distance of 11.41 feet to a point;

THENCE, N 90°00'00" W, leaving said common line and the approximate centerline of said creek across said Larry Walker Tract 2 (recorded in D212048802), a distance of 256.37 feet to a point at the beginning of a curve to the right, whose radius is 55.00 feet and whose long chord bears S 64°23'34" W, a chord distance of 67.40 feet;

THENCE along said curve in a southwesterly direction, crossing the common line of said Larry Walker Tract 2 (recorded in D212048802) and said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257), and continuing, in all, through a central angle of 75°34'15", an arc distance of 72.54 feet to a point;

THENCE, S 45°58'27" W, across said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257), a distance of 232.64 feet to a point in the northeasterly line of East Kennedale Parkway (Right-of-Way varies);

THENCE, N 42°26'58" W, along the northeasterly line of said East Kennedale Parkway, a distance of 58.44 feet to a point;

THENCE, N 45°58'27" E, leaving said northeasterly line, across said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257), a distance of 229.30 feet to a point at the beginning of a curve to the right, whose radius is 55.00 feet and whose long chord bears N 28°59'16" E, a chord distance of 74.49 feet;

THENCE along said curve in a northeasterly direction, crossing the common line of said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257) and said Larry Walker Tract 3 (recorded in D212279455), and continuing, in all, through a central angle of 85°14'35", an arc distance of 81.83 feet to a point

THENCE, N 00°00'00" E, crossing said Larry Walker Tract 3 (recorded in D212279455), said Larry Walker Tract 4 (recorded in D212279455) and said Larry Walker Tract 1 Parcel A, (recorded in D212279455), in all, a distance of 235.51 feet to a point in the north line of said Larry Walker Tract 1 Parcel A, (recorded in D212279455) and being in the south line of said Uselton tract;

THENCE, N 89°32'51" E, along the common line of said Larry Walker Tract 1 Parcel A, (recorded in D212279455) and said Uselton tract, a distance of 69.70 feet to a 1/2" iron rod found at the northeast corner of said Larry Walker Tract 1 Parcel A, (recorded in D212279455) and being the northwest corner of said Larry Walker Tract 4 (recorded in D212279455);

THENCE, S 89°33'48" E, along the common line of said Larry Walker Tract 4 (recorded in D212279455) and said Uselton tract, a distance of 149.79 feet to a point at the northeast corner of said Larry Walker Tract 4 (recorded in D212279455) at the southeast corner of said Uselton tract and being in the northwesterly line of said Larry Walker Tract 3 (recorded in D212279455);

THENCE N 47°27'09" E, along the common line of said Larry Walker Tract 3 (recorded in D212279455) and said Uselton tract, a distance of 221.18 feet to a point at the most north corner of said Larry Walker Tract 3 (recorded in D212279455), being the most easterly southeast corner of said Uselton tract and being in the approximate centerline of said creek;

THENCE N 15°38'01" W, along the common line of said Mark J. Doskocil tract (recorded in D214158489) and said Uselton tract, along the approximate centerline of said creek, a distance of 50.67 feet to a point at the northwest corner of said Mark J. Doskocil tract (recorded in D214158489) and being the southwest corner of said Mark J. Doskocil tract (recorded in D214158488);

THENCE N 07°43'55" E, along the common line of said Mark J. Doskocil tract (recorded in D214158488 and said Uselton tract) and along the approximate centerline of said creek, a distance of 92.23 feet to the POINT OF BEGINNING and containing 7.964 acres (346913 square feet) of land, more or less.



8221 Southwest Boulevard, Suite 100
 Fort Worth, Texas 76132
 (O) 817.231.8100 (F) 817.231.8144
 Texas Registered Engineering Firm F-10998
 Texas Registered Survey Firm F-10158800
 www.barronstark.com

Survey Exhibit Showing
 7.964 Situated in the
J.B. RENFRO SURVEY, ABSTRACT NO. 1260
 City of Kennedale, Tarrant County, Texas

PROJECT No. 307-9537
 DATE: FEBRUARY 2019
 SHEET
2 OF 2

EXHIBIT B

DELIVERY AND RELEASE OF DEPOSIT AMOUNTS

DATE*	BEGINNING DATE	EXPIRATION DATE	AMOUNT BUYER DELIVERS TO ESCROW	AMOUNT NON-REFUNDABLE TO BUYER (except as otherwise provided in the Contract)	AMOUNT APPLICABLE TO PURCHASE PRICE
Effective Date	Date Escrow Agent receipts fully-executed Contract				
Earnest Money Deposit	3 days after the Effective Date		\$500 for Feasibility Period		Yes
Feasibility Period		August 1 st , 2019			
Delivery of Fee for Extension		August 1 st , 2019	\$500	\$0	Yes
Extension	August 1 st , 2019	September 1 st , 2019			
Last Day to Close		September 1 st , 2019	If Closing occurs, Buyer will deliver the Balance of Purchase Price at Closing If Closing does not occur, no amount will be delivered	If Closing occurs, Buyer will deliver the Balance of Purchase Price at Closing. If Closing does not occur, no amount will be delivered; however, Seller will keep the amounts previously released as set forth above	Yes

* If any of the above dates occur on a weekend or a holiday, the applicable date will move forward to the next available business day.

Buyer: *b* Seller: *b*

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Larry Walther ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 7.764 acres of land located at 113 E. Kennedale Parkway, Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Project").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Project for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Project ("Option").

2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect January 15th 2019 (Termination Date"). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").

3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

(h) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(i) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Option nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(j) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Project as long as the Option Agreement is in effect.

4. Purchase Price. The purchase price for the Property shall be \$900,000.00.

5. Time of the Essence. Time is of the essence with regard to all time periods and deadlines stated in this Option Agreement.

6. Governing Law and Venue. This Option Agreement shall be construed in accordance with and the rights and remedies of the parties determined under the laws of the State of Texas. The parties agree that exclusive venue for any suit or proceeding relating to this Option Agreement, including the enforcement thereof, shall be in Tarrant County, Texas.

7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.

8. Amendment. This Option Agreement may only be amended by a written instrument signed by Optionor and Optionee or their respective successors and permitted assigns.

9. Counterparts. This Option Agreement may be executed in counterparts and all such counterparts shall constitute one single agreement.

Executed to be effective as of the date set forth above.

OPTIONOR



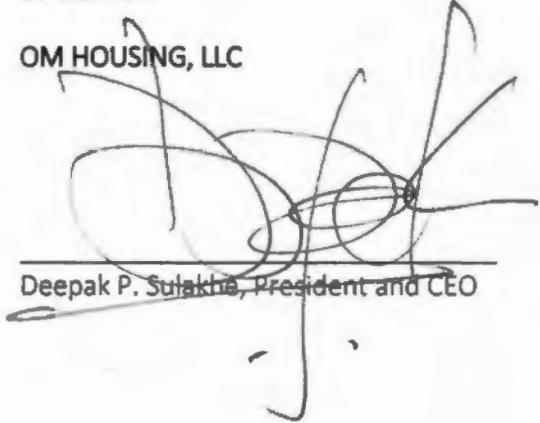
11-19-18

Larry Walther
PO box J1346
Fort Worth, TX 76162

OPTIONEE:

OM HOUSING, LLC

By:



Deepak P. Sulakha, President and CEO

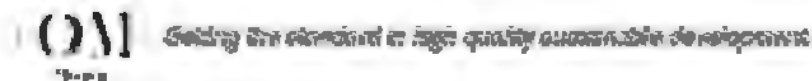
sarah@sarahandersonconsulting.com

From: Jason Lain <jlain@omhousing.com>
Sent: Monday, January 7, 2019 4:20 PM
To: sarah@sarahandersonconsulting.com; Alyssa Carpenter
Cc: Deepak P. Sulakhe
Subject: FW: EOA Consideration Acknowledgment

Follow Up Flag: Follow up
Flag Status: Flagged

Acknowledgement for second site is below.

Sincerely,



Jason G. Lain, MDiv, MA, Broker
Director of Acquisitions
Central: (972) 836-7232
Cell: (325) 661-7232
Fax (214) 594-9753
Email: jlain@omhousing.com



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<http://www.trec.state.tx.us/pdf/contracts/LABS1-0.pdf> - Texas Law requires all real estate licensees to provide the information about the brokerage services found in this link.

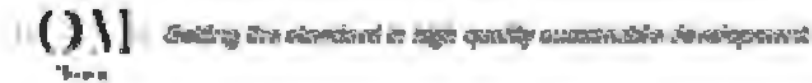
From: Larry Walther <larry.walther@usu.edu>
Date: Monday, January 7, 2019 at 4:15 PM
To: Jason Lain <jlain@omhousing.com>
Cc: "Deepak P. Sulakhe" <dsulakhe@omhousing.com>
Subject: RE: EOA Consideration Acknowledgment

I acknowledge that the \$500 option fee was received and that that option agreement is binding through January 20. Larry

From: Jason Lain <jlain@omhousing.com>
Sent: Monday, January 7, 2019 1:41 PM
To: Larry Walther <larry.walther@usu.edu>
Cc: Deepak P. Sulakhe <dsulakhe@omhousing.com>
Subject: EOA Consideration Acknowledgment

Larry, could we get an email from you acknowledging that you received the \$500 Consideration fee for the EOA? The State requires that we have something from you (can be email) simply stating it's been received. Thank you so much for your help!

Sincerely,



Jason G. Lain, MDiv, MA, Broker
Director of Acquisitions
Central: (972) 836-7232
Cell: (325) 660-7232
Fax (214) 594-9753
Email: jlain@omhousing.com



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<http://www.trec.state.tx.us/pdf/contracts/LABS1-0.pdf> - Texas Law requires all real estate licensees to provide the information about the brokerage services found in this link.

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Mark Jason Doskocil ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 8.021 acres located at 345 & 337 Kennedale Sublet Rd., Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Property").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Property for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Property ("Option").
2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect January 15th 2019 (Termination Date). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").

3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

(b) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(c) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Optionor nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(d) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Property as long as the Option Agreement is in effect.

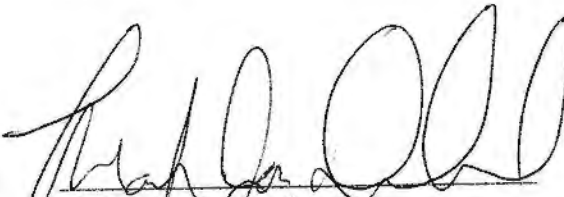
4. Purchase Price. The purchase price for the Property shall be \$595,000.
5. Time of the Essence. Time is of the essence with regard to all time periods and deadlines stated in this Option Agreement.
6. Governing Law and Venue. This Option Agreement shall be construed in accordance with and the rights and remedies of the parties determined under the laws of the State of Texas. The parties agree that exclusive venue for any suit or proceeding relating to this Option Agreement, including the enforcement thereof, shall be in Tarrant County, Texas.
7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.
8. Amendment. This Option Agreement may only be amended by a written instrument signed by Optionor and Optionee or their respective successors and permitted assigns.
9. Counterparts. This Option Agreement may be executed in counterparts and all such counterparts shall constitute one single agreement.

(SIGNATURE PAGE ON NEXT SHEET)

Executed to be effective as of the date set forth above.

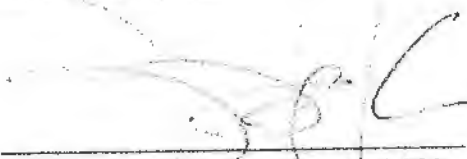
OPTIONOR:

Mark Jason Daskocil
4408 Barnett Blvd.,
Arlington, TX 76017

By: 
Mark Jason Daskocil

OPTIONEE:

OM HOUSING, LLC

By: 
Deepak P. Sulakhe, President and CEO

Subject: FW: Acknowledgement of Consideration for EOA

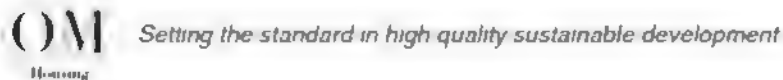
From: Daskocil Properties <jason@dpmrealty.com>
Date: Monday, January 7, 2019 at 3:04 PM
To: Jason Lain <jlain@omhousing.com>
Subject: Re: Acknowledgement of Consideration for EOA

Yes I received the \$500 option fee for the purchase of 337 Kennedale Sublett Rd.
Thank you,

On Mon, Jan 7, 2019 at 2:42 PM Jason Lain <jlain@omhousing.com> wrote:

Jason, could we get an email from you acknowledging that you received the \$500 Consideration fee for the EOA? The State requires that we have something from you (can be email) simply stating it's been received. Thank you so much for your help!

Sincerely,



Jason G. Lain, MDiv, MA, Broker

Director of Acquisitions

Central: (972) 836-7232

Cell: (325) 660-7232

Fax (214) 594-9753

Email: jason@domrealty.com

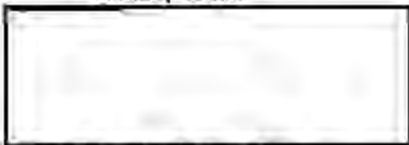


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<http://www.texasalea.com/realty/contract/AR81-0.pdf> - Texas Law requires all real estate licensees to provide the information about the brokerage services found in this link.

Jason Domen
Broker/Owner



Office (817) 472-5455
Cell (817) 229-9773
Fax (817) 784-0703
jason@domrealty.com

Information About Brokerage Services as required by Texas Law

19315
Application Documents

Site Information Form Part III

Self Score Total: **120**

1. Site Acreage

Please identify site acreage as listed in each of the following exhibits/documents.

Site Control: **7.964** Site Plan: **7.964** Appraisal: **NA** ESA: **15.76**

(*) Should equal acreage indicated in site control documents less acreage intended to be dedicated, sold or used for public purpose and not to be encumbered by LURA (net acreage). The net acreage will be used for calculating density for all purposes.

Please provide an explanation of any discrepancies in site acreage below:

ESA is for a larger parcel. Applicant has larger parcel under contract and 7.964 acres will be for the HTC application.

2. Site Control [10 TAC §11.204(10)]

The current owner of the Development Site is (If scattered site & more than one owner refer to Tab 13):

Mark J. Duskocil and Larry Walther

Mark J. Duskocil and Larry Walther

Entity Name

Contact Name

4408 Barnett Blvd

Address

Arlington

TX

76017

7/23/2014

City

State

Zip

Date of Last Sale

Is the seller affiliated with the Applicant, Principal, sponsor, or any Development Team member, as described in §11.302(e)(1)(B) (Identity of Interest)? **No**

If "Yes," please explain: **NA**

If "Yes", the Application must include the documentation required by 10 TAC §11.302(e)(1)(B)(ii), as applicable.

Did the seller acquire the property through foreclosure or deed in lieu of foreclosure? **No**

Identify all of the sellers of the proposed property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development Team:

Name:

Relationship:

NA

Site Control is in the form of:

Contract for sale.

If Direct Loan funds are requested, contract includes required language in 10 TAC §13.5(e).

Recorded Warranty Deed with corresponding executed closing/settlement statement.

Contract for lease.

Expiration of Contract or Option: 9/1/2019 Anticipated Closing Date: 9/1/2019

Title Commitment or Title Policy is included behind this tab (per 10 TAC §11.204(12)).

The Property has the following encumbrance(s):

3. Ingress/Egress and Easements (9% and 4% HTC Only) [10 TAC §11.204(10)(D)]

If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide:

Evidence of an easement, leasehold, or similar documented access; and

Evidence that the fee title owner of the property agrees that the LURA may extend to the access easement.

4. **30% increase in Eligible Basis "Boost" (9% and 4% HTC Only) [10 TAC §11.4(c)]**

Development qualifies for the boost for:

- Qualified Census tract that has less than 20% HTC Units per household

New Construction or Adaptive Reuse Development is in a QCT with 20% or greater Housing Tax Credit Units per household, and a resolution from the Governing Body of the appropriate municipality or county allowing the construction of the Development is included behind Tab 8.†*

†Rehabilitation Developments located in a QCT with 20 percent or greater Housing Tax Credit Units per total households are eligible to qualify for the boost and are not required to obtain such a resolution from the Governing Body.

* Resolution not due until Resolutions Delivery Date for Tax-Exempt Bond Developments

Development is located in a Small Area Difficult Development Area (SADDA)

- Rural Development (**Competitive HTC only**)

- Development is entirely Supportive Housing (**Competitive HTC Only**)

X Development meets the criteria for the Opportunity Index as identified in §11.9(c)(4) of the Qualified Allocation Plan (**Competitive HTC only**)

Development includes an additional 10% of units at 30% AMI. (**Competitive HTC only**)

Must be in addition to the number of units needed for any scoring item or any other funding source from MF Direct Loan requirements.

Development is in an area covered by a concerted revitalization plan and elects and is eligible for points under 10 TAC §11.9(d)(7), is not Elderly, and is not located in a QCT. (**Competitive HTC only**)

Development is located in a Qualified Opportunity Zone designated under the Bipartisan Budget Act of 2018 (H.R. 1892). (**Competitive HTC only**)

If a revised form is submitted, date of submission:



TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED
 ©Texas Association of REALTORS®, Inc. 2005

1. PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: OM Housing, LLC
 Address: 5033 Brookview Drive, Dallas, Texas 75220
 Phone: 214.432.7610 Fax: 214.594.9753
 E-mail: dsulakhe@omhousing.com

Buyer: KD Hammack Creek Housing, LP
 Address: 5033 Brookview Drive, Dallas, Texas 75220
 Phone: 214.432.7610 Fax: 214.594.9753
 E-mail: dsulakhe@omhousing.co

2. PROPERTY:

A. "Property" means that real property situated in Tarrant County, Texas at 133 E. Kennedale Pkwy, and 345 & 337 Kennedale Sublet Rd., Kennedale, TX (address) and that is legally described on the attached Exhibit A or as follows:

Approximately 7.964 Acres out of combined 7.764 Acres 113 E. Kennedale PKWY and 8.021 Acres J.B. Renfro Survey Abstract NO. 1260 Tracts 1&2. Generally identified in Exhibit A.

B. Seller will sell and convey the Property together with:
 (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
 (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
 (3) Seller's interest in all licenses and permits related to the Property.

(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)

3. SALES PRICE:

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing	\$ <u>1,600,000.00</u>
(2) Sum of all financing described in Paragraph 4	\$ _____
(3) Sales price (sum of 3A(1) and 3A(2))	\$ <u>1,600,000.00</u>

B. Adjustment to Sales Price: (Check (1) or (2) only.)

- (1) The sales price will not be adjusted based on a survey.
- (2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.
- (a) The sales price is calculated on the basis of \$ _____ per:
- (i) square foot of total area net area.
- (ii) acre of total area net area.
- (b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:
- (i) public roadways;
- (ii) rights-of-way and easements other than those that directly provide utility services to the Property; and
- (iii) _____.
- (c) If the sales price is adjusted by more than _____ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within 30 _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING**: Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

- A. Third Party Financing: One or more third party loans in the total amount of \$ _____ .
This contract:
- (1) is not contingent upon Buyer obtaining third party financing.
- (2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum.
- B. Assumption: In accordance with the attached Commercial Contract Financing Addendum, Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____ .
- C. Seller Financing: The delivery of a promissory note and deed of trust from Buyer to Seller under the terms of the attached Commercial Contract Financing Addendum in the amount of \$ _____ .

5. **EARNEST MONEY**:

- A. Not later than 3 days after the effective date, Buyer must deposit \$ 500.00 _____ as earnest money with Stewart Title, Carol Erik _____ (escrow agent) at 17304 Preston Road, Suite 110, Dallas TX _____ (address). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract by providing written notice to Buyer before Buyer deposits the earnest money and may exercise Seller's remedies under Paragraph 15.
- B. Buyer will deposit an additional amount of \$ _____ with the escrow agent to be made part of the earnest money on or before:
- (i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or
- (ii) see Addendum A & Exhibit B _____ .
Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.
- C. Buyer may instruct the escrow agent to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY AND SURVEY:

A. Title Policy:

- (1) Seller, at Seller's expense, will furnish Buyer an Owner's Policy of Title Insurance (the title policy) issued by Title 365 (title company) in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:
 - (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
 - (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.
- (2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:
 - (a) will not be amended or deleted from the title policy.
 - (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.
- (3) Buyer may object to any restrictive covenants on the Property within the time required under Paragraph 6C.
- (4) Within 15 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 120 days after the effective date:

- (1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.
- (3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's existing survey of the Property dated _____ along with an affidavit required by the title company for approval of the survey. If the survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a survey acceptable to the title company and deliver the acceptable survey to the Buyer and the title company within 15 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 15 days if necessary for Seller to deliver an acceptable survey within the time required.

C. Buyer's Objections to the Commitment and Survey:

- (1) Within 30 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

Commercial Contract - Unimproved Property Concerning _____

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing: _____

Items in Section 6.C. _____

(see Addendum A)

B. Feasibility Period: Buyer may terminate this contract for any reason within 120 days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 100.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the escrow agent. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to timely deposit the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to timely pay the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:
(a) employ only trained and qualified inspectors and assessors;
(b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
(c) abide by any reasonable entry rules or requirements of Seller;
(d) not interfere with existing operations or occupants of the Property; and
(e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from

Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

- (1) Delivery of Property Information: Within 15 days after the effective date, Seller will deliver to Buyer:
- (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
 - (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
 - (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
 - (d) copies property tax statements for the Property for the previous 2 calendar years;
 - (e) plats of the Property;
 - (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
 - (g) all communication and/or agreements with public agencies pertaining to the property
(h) Geotech & Environmental reports, engineering studies, flood plain maps and
any other study/report pertaining to the subject property.
- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer and all copies that Buyer made of those items; and (b) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed. This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES: Seller shall retain all funds from short term leases until closing of property.

~~A. Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:~~

- ~~(1) any failure by Seller to comply with Seller's obligations under the leases;~~
- ~~(2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;~~
- ~~(3) any advance sums paid by a tenant under any lease;~~
- ~~(4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and~~
- ~~(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.~~

~~B. Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must state:~~

Commercial Contract - Unimproved Property Concerning _____

- ~~(1) that no default exists under the lease by the landlord or tenant as of the date the estoppel certificate is signed;~~
- ~~(2) the amount of the scheduled rents to be paid through the end of the lease and any rental payments that have been paid in advance;~~
- ~~(3) the amount of any security deposit;~~
- ~~(4) the amount of any offsets tenant is entitled against rent;~~
- ~~(5) the expiration date of the lease;~~
- ~~(6) a description of any renewal options; and~~
- ~~(7) _____~~

9. BROKERS:

A. The brokers to this sale are:

Cooperating Broker	License No.	Principal Broker	License No.
Address		Address	
Phone	Fax	Phone	Fax
E-mail: _____		E-mail: _____	

Cooperating Broker represents buyer.

Principal Broker: *(Check only one box.)*

- represents Seller only.
- represents Buyer only.
- is an intermediary between Seller and Buyer.

B. Fees. *(Check only one box.)*

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Cooperating Broker a total cash fee of:

Principal Broker a total cash fee of:

_____ % of the sales price.

_____ % of the sales price.

The cash fees will be paid in _____ County, Texas. Seller authorizes escrow agent to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

A. The closing of the sale will be on or before 30 days after the expiration of the feasibility period and subject to extensions provided in Section 12 or within 7 days after objections made under Paragraph 6C have been cured or waived, whichever date is later (the closing date).

B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.

- C. At closing, Seller will execute and deliver, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.

- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) an assignment of all leases to or on the Property;
 - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
 - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (5) an affidavit acceptable to the escrow agent stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the escrow agent to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
 - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.

- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the escrow agent;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.

F. ~~Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.~~

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: *(Identify exhibit if special provisions are contained in an attachment.)*
Attached hereto as Addendum A and Exhibit B.

- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey, or commitment, Buyer may:
 - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as the sole remedy; or
 - (2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
 - (1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages, thereby releasing the parties from this contract; or
 - (2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
 - (1) Seller and the sales price will be reduced by the same amount; or
 - (2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or any escrow agent is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer.
- ~~B. If both parties make written demand for the earnest money, escrow agent may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of escrow agent from all parties.~~
- ~~C. If one party makes written demand for the earnest money, escrow agent will give notice of the demand by providing to the other party a copy of the demand. If escrow agent does not receive written objection to the demand from the other party within 15 days after the date escrow agent sent the demand to the other party, escrow agent may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors.~~
- D. Escrow agent will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- ~~E. If escrow agent complies with this Paragraph 18, each party hereby releases escrow agent from all claims related to the disbursement of the earnest money.~~
- ~~F. Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to escrow agent are effective upon receipt by escrow agent.~~

19. MATERIAL FACTS: To the best of Seller's knowledge and belief: *(Check only one box.)*

- A. Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement.

F. Buyer may may not assign this contract. If Buyer assigns this contract, Buyer will be relieved of any future liability under this contract only if the assignee assumes, in writing, all obligations and liability of Buyer under this contract.



23. TIME: Time is of the essence in this contract. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this contract falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

24. EFFECTIVE DATE: The effective date of this contract for the purpose of performance of all obligations is the date the escrow agent receipts this contract after all parties execute this contract.

25. ADDITIONAL NOTICES:

- A. Buyer should have an abstract covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a title policy.
- B. If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fees of the district before final execution of this contract.
- C. Notice Required by §13.257, Water Code: "The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.
- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Selection of inspectors and repairmen is the responsibility of Buyer and not the brokers.

26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on 02-28-19, the offer will lapse and become null and void.

(TAR-1802) 10-18-05 Initialed for Identification by Buyer  and Seller 

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Buyer: OM Housing, LLC
By: _____
Printed Name: Deepak P. Sulakhe
Title: President / CEO

Seller: KD Hammack Creek Housing, LP
By: _____
Printed Name: Deepak P. Sulakhe
Title: Member

Buyer: _____
By: _____
Printed Name: _____
Title: _____

Seller: _____
By: _____
Printed Name: _____
Title: _____

AGREEMENT BETWEEN BROKERS

Principal Broker agrees to pay _____ (Cooperating Broker) a fee of \$ _____ or _____ % of the sales price when the Principal Broker's fee is received. Escrow agent is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Cooperating Broker
By: _____

Principal Broker
By: _____

ATTORNEYS

Buyer's attorney is:
Name: Fielder Nelms
Address: Smith, Stern, Friedman & Nelms, P.C.
14160 Dallas Parkway, Suite 800, Dallas, TX 75254
Phone & Fax: 214-739-0606 / Fax: 214-739-0608
E-mail: fnelms@ssfmlaw.com

Seller's attorney is:
Name: _____
Address: _____
Phone & Fax: _____
E-mail: _____

Buyer's attorney requests copies of documents, notices, and other information:
 the title company sends to Buyer.
 Seller sends to Buyer.

Seller's attorney requests copies of documents, notices, and other information:
 the title company sends to Seller.
 Buyer sends to Seller.

ESCROW RECEIPT

Escrow agent acknowledges receipt of:
 A. the contract on this day February 28, 2019 (effective date);
 B. earnest money in the amount of \$ _____ in the form of _____ on _____

Escrow Agent: Stewart Title Company
By: Carol Erick
Carol Erick

Address: 15950 Dallas Parkway, Suite 100
Dallas, TX 75248
Phone & Fax: 214-473-5414 F 833-431-4776
E-mail: Carol.Erick@Stewart.com

ADDENDUM A

TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

THIS ADDENDUM A TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY is attached to, and made a part of, that Commercial Contract - Unimproved Property (the "**Contract**") executed by **KD Hammack Creek Housing, LP**, a to be formed Texas limited partnership (together with its successors and/or assigns, "**Buyer**"); and **OM Housing, LLC**, a Texas limited liability Company (together with its successors and/or assigns, "**Seller**") (Buyer and Seller are collectively referred to as the "**Parties**", and each a "**Party**"). In the event the terms of this Addendum A conflict with the terms of the Contract, the terms of this Addendum A shall control. All references to the terms "contract" in the Contract shall mean the Contract as amended by this Addendum A.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Feasibility Period.** Paragraph 7.B is hereby deleted in its entirety and replaced with the following:

"Buyer may terminate this contract for any reason on or before August 1st, 2019 (Feasibility Period) by providing Seller written notice of Termination (*Check only one box*)."

2. **Inspections.** Paragraph 7.C(1) is hereby amended by adding the following thereto:



"Such inspections, studies and assessments may include, without limitation, one or more environmental site assessments, including without limitation, borings and other physical samplings."

3. **Leases.** Paragraph 8 is hereby deleted in its entirety and replaced with the following:

"Notwithstanding anything to the contrary set forth in this contract, Seller represents and warrants to Buyer that (a) there are no outstanding written or oral leases in any way affecting the Property, (b) no person or entity has any right with respect to all or any portion of the Property (whether by option to purchase, right of first refusal, contract or otherwise) that may prevent or interfere with Buyer taking title to, and exclusive possession of, all of the Property at closing, and (c) Seller shall not enter into any new lease with respect to the Property during the pendency of this contract without Buyer's prior written consent, which may be given or withheld by Buyer in Buyer's sole and absolute discretion." This shall not apply to any mineral lease contracts. Minerals are not being conveyed.

4. **Closing.** Paragraph 10 is hereby amended by adding the following:

"Extensions. Buyer shall have the right to extend the closing date for one (1) additional periods (1) from August 1st, 2019 to September 1st 2019. Buyer must request the extension period by delivering (a) written notice thereof to Buyer, and (b) a \$500.00 Extension Payment to escrow agent, prior to the expiration of the feasibility period. The Extension Payments shall be applicable to the purchase price at closing (see Exhibit B)."

Buyer:  Seller: 

5. **Rollback Taxes.** Paragraph 14.B in hereby deleted and replaced with the following:

"**Rollback Taxes.** If the sale contemplated hereby, a change in the use of the Property, or denial of any special use valuation of the Property would result in the assessment after the closing of additional taxes and interest applicable to the period of time before the closing ("**Rollback Taxes**"), then Seller shall give a credit to Buyer at the closing for 100% of the amount of the Rollback Taxes (including interest and penalties) that may be assessed after the closing as reasonably estimated by the title company, and Buyer shall be responsible for the payment of the Rollback Taxes (including interest and penalties) if and when assessed after the closing. There will be no subsequent adjustment notwithstanding whether the actual Rollback Taxes assessed after the closing differ from the estimate used at the closing. If any Rollback Taxes are due before the closing due to Seller's change in use of the Property or a denial of a special use valuation of the Property, then Seller shall pay those Rollback Taxes (including any interest and penalties) at or before the closing."

6. **Default.** Paragraph 15.B(1) is hereby deleted and replaced with the following:

"(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7.B(1), together with Seller's reimbursement of Buyer's reasonable out-of-pocket expenses incurred in connection with its due diligence inspection of the Property, as Buyer's sole remedy; or"

7. **Material Facts.** Paragraph 19.B is hereby amended by adding the following:

"(11) any proposed special assessments or condemnation; pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel; and

(12) any existing or proposed plans to widen, modify or realign any street adjoining or adjacent to the Property, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads.

Seller shall fully disclose to Buyer, promptly upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the closing date that may affect the representations and warranties set forth above. The representations and warranties of Seller contained herein shall survive the closing and delivery of the Deed."

8. **Notices.** Paragraph 20 is hereby amended by adding the following:

"Notices sent by facsimile and/or e-mail shall not be effective until the sending party receives confirmation that the notice has been received by the receiving party."

9. **Feasibility Period.** Subject to the terms of Paragraph 7.B(1) of the Contract, the earnest money shall be disbursed by escrow agent to Buyer if Buyer gives written

notice to escrow agent on or before the end of the feasibility period, stating that Buyer has terminated the Contract. Such notice by Buyer shall be conclusive evidence of Buyer's right to receive the earnest money. Seller and Buyer irrevocable instruct escrow agent to disburse the earnest money to Buyer upon receipt of said notice, without any other written authorization and without further verification of the party entitled to receive the earnest money. Seller and Buyer agree to indemnify and hold escrow agent harmless for making any disbursement in an attempt to comply with the provisions hereof. Escrow Agent may rely upon any document or copy which it believes to be genuine, may assume that the Party executing any document is authorized to do so, and shall not be liable for anything, which it in good faith, may or may not do in connection herewith.

10. **Closing Conditions.** In addition to any other conditions set forth in the Contract, Buyer shall not be obligated to close this transaction and purchase the Property unless each of the following are either timely satisfied or waived by Borrower in writing:

a. **Subdivided.** At or prior to closing, if the Property is part of a larger parcel belonging to Seller, the Property shall be subdivided from the larger parcel and/or platted. Conversely, if Property is part of several smaller parcels belonging to Seller, the Property shall be combined into a single parcel and/or platted.

b. **Utilities.** Prior to closing, Buyer shall have received utility will-serve letters confirming that all necessary utilities are available in sufficient capacity to service the Property for its intended purpose without unusual or extraordinary expense to Buyer other than standard "tap in" fees.

c. **Governmental Approvals.** Prior to closing, Buyer shall have received all necessary and customary governmental approvals necessary for Buyer to develop and operate the Property for its intended purpose, including without limitation, those for utilities, zoning, special uses, building construction, site construction and off-site improvements (such as road widening easements and permits from applicable departments of transportation, and ingress/egress easements), and/or approval of a final site plan for the proposed development along with utility commitments and required capacity for the intended number of units. All such approvals, permits and allocations, and any conditions imposed thereon, must be acceptable to Buyer in its sole discretion

d. **Zoning.** At closing the Property shall be zoned to permit the development of the Property for Buyer's intended purpose.

In the event that any condition precedent in this Section 10 is not satisfied by the date specified in this Section 10, Buyer shall have the right to terminate the Contract by delivering written notice thereof to Seller, and Buyer shall receive a full and prompt refund of the earnest money (less the independent consideration referenced in Paragraph 7.B(1) of the contract), together with accrued interest thereon, without the need for Seller's consent for its release.

11. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows:

a. **No Notices.** Seller has not received any notice of, and to the best of its knowledge there are no (i) proposed special assessments or condemnation; (ii) pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel.

b. **Access.** Seller has not received notice of any existing or proposed plans to widen, modify or realign any street adjoining or adjacent to the Property, and the Property has full and free access to and from public highways, streets and roads. Seller has no knowledge of any pending or threatened proceeding by any governmental authority, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads

c. **Utility Availability.** Public water, sanitary and storm sewer, electricity, gas, and other required utilities (i) are available to the Property in quantities sufficient for the successful operation of the Property for its intended purpose; (ii) enter the Property through adjoining public streets or, if passing through adjoining private land, do so in accordance with recorded public or private easements; and (iii) are serviced and maintained by the appropriate public or quasi-public entity.

d. **Utility District.** The Property is not situated in a utility or other statutorily created district providing water, sewer, drainage or flood control facilities and services.

e. **Pipelines.** There are no transportation pipelines, including without limitation, pipelines for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product or hazardous substance, located on, under or within the Property.

f. **Owners' Association.** The Property is not subject to mandatory membership in a property owners' association.

g. **Litigation.** There is no pending or threatened litigation, arbitration, administrative action or examination, claim or demand whatsoever related to the Property; and no attachments, execution proceedings, liens, assignments or insolvency proceedings are pending or threatened against Seller of the Property or contemplated by Seller.

Seller shall fully disclose to Buyer, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the closing date that may affect the representations and warranties set forth above. The representations and warranties of Seller contained herein shall survive the closing and delivery of the Deed.

12. **Plans and Approvals.** Buyer shall have the right to file, at Buyer's expense, any and all applications and plans necessary to obtain building permits, any rezoning or subdivision (or the vacation of any existing subdivision or plat) and/or any other agreement, assurance, approval or permit from any and all governmental authorities having jurisdiction

over the Property that Buyer deems appropriate in connection with the intended purpose of the Property. Seller agrees to join in the execution of any application required in order to obtain any such agreement, assurance, permit or approval (or file such application individually if the relevant governmental authority shall so require). Seller further agrees to cooperate with Buyer or its nominee in all respects, including without limitation, attending and giving favorable testimony at any hearings on the petitions or applications, meeting with and providing information to public and private utilities and governmental and quasi-governmental entities, and otherwise working to obtain the agreements, assurances, approvals and permits required by Buyer or its nominee without additional cost or obligation to Buyer or its nominee.

13. **Survey.** Seller agrees to credit the purchase price in the amount of \$5,000, if and only if property closes, at closing to reimburse Buyer for the cost of the survey.

14. **Financing.** Buyer shall have the right to terminate the Contract if Buyer does not secure financing on terms acceptable to Buyer in Buyer's sole and absolute discretion, by delivering written notice thereof to Seller, and Buyer shall receive a full and prompt refund of the earnest money (less the independent consideration referenced in Paragraph 7.B(1) of the Contract), together with accrued interest thereon, without the need for Seller's signature for its release.

15. **Right to Terminate.** Subject to the terms of other terms of the Contract regarding disbursement of the earnest money, Buyer shall have the right to terminate the Contract at any time prior to closing.

16. **Effect of Termination.** The Contract shall be void and of no further force and effect upon any proper termination under the terms of the Contract (other than terms that specifically provide that they survive termination of the Contract).





Buyer:  Seller: 

EXHIBIT A

Legal Description

(to be attached)

Buyer:  Seller: 

LEGAL DESCRIPTION

BEING 7.964 acres of land situated in the J.B. RENFRO SURVEY, ABSTRACT No. 1260, City of Kennedale, Tarrant County, Texas, being a portion of those certain tracts of land described in deed as Tract 1, Tract 3 and Tract 4, to Larry Walker, recorded in Instrument Number D212279455, County Clerk's Records, Tarrant County, Texas, a portion of that certain tract of land described in to Larry M. Walker, recorded in Volume 9632, Page 257, Deed Records Tarrant County, Texas, a portion of that certain tract of land described in deed as Tract 1 and Tract 2, recorded in Clerk's File Number D212048802, County Clerk's Records, Tarrant County, Texas, and a portion of those certain tract of land described in deed to Mark J. Duskocil, recorded in Instrument Number D214158488 and D214158489, County Clerk's Records, Tarrant County, Texas, said 7.964 acres being more particularly described as follows:

COMMENCING at a point at the northwest corner of that certain tract of land described in deed to Mark J. Duskocil, recorded in Clerk's File Number D214158488, County Clerk's Records, Tarrant County, Texas and being the northeast corner of that certain tract of land described in deed to Melvin Uselton and wife, Margaret Uselton, recorded in Volume 5146, Page 152, Deed Records, Tarrant County, Texas, said COMMENCING POINT being (per deed call) S 61°48'24" E, distance of 505.44 feet from the southeast corner of Lot 4-R, Block J, CRESTDALE ADDITION, an Addition to the City of Kennedale, Tarrant County, Texas, according to the Plat recorded in Volume 388-12, Page 21, Plat Records, Tarrant County, Texas;

THENCE S 07°43'55" W, along the common line of said Duskocil and Uselton tracts, a distance of 7.64 feet to the POINT OF BEGINNING and most northerly northwest corner of the herein described 7.964 acre tract, said BEGINNING POINT having a State Plane, NAD 83, Zone 4202 (Grid) coordinate value of NORTH:6921217.807 and EAST:23622806.596, for reference;

THENCE N 87°40'04" E, leaving said common line, across said Duskocil tract (recorded in D214158488), a distance of 141.10 feet to a point;

THENCE S 03°40'20" E, crossing the common line of said Duskocil tracts (recorded in D214158488 and D214158489), and continuing, in all, a distance of 166.89 feet to a point;

THENCE S 68°22'12" E, across said Duskocil tract (recorded in D214158489), a distance of 59.87 feet to a point;

THENCE, S 21°37'48" W, continuing across said Duskocil tract (recorded in D214158489), a distance of 18.00 feet to a point;

THENCE, S 68°22'12" E, continuing across said Duskocil tract (recorded in D214158489) a distance of 67.01 feet to a point;

THENCE, S 25°29'12" W, continuing across said Duskocil tract (recorded in D214158489), a distance of 28.47 feet to a point;

THENCE, S 68°17'14" E, continuing across said Duskocil tract (recorded in D214158489), a distance of 202.48 feet to a point in the northwesterly line of Kennedale-Sublett Road, being at the beginning of a curve to the right, whose radius is 605.31 feet and whose long chord bears S 36°39'32" W, a chord distance of 180.23 feet;

THENCE along the northwesterly line of said Kennedale-Sublett Road, as follows:

Along said curve in a southwesterly direction, through a central angle of 17°07'24", an arc distance of 180.90 feet to a point;
S 45°13'30" W, a distance of 464.00 feet to a point at the beginning of a curve to the right, whose radius is 225.04 feet and whose long chord bears S 59°40'38" W, a chord distance of 112.30 feet;
Along said curve in a southwesterly direction, through a central angle of 28°53'45", an arc distance of 113.50 feet to a 1/2" iron rod found in the southerly west line of said Duskocil tract (recorded in D214158489) and being the southeast corner of said Larry Walker Tract 2 (recorded in D212048802) for the most southerly corner of the herein described 7.964 acre tract;

THENCE, N 08°31'21" E, along the common line of said Duskocil tract (recorded in D214158489) and said Larry Walker Tract 2 (recorded in D212048802), along the approximate centerline of a creek, a distance of 242.81 feet to a point;

THENCE, N 03°59'13" E, continuing along the common line of said Duskocil tract (recorded in D214158489) and said Larry Walker Tract 2 (recorded in D212048802), continuing along the approximate centerline of said creek, a distance of 11.41 feet to a point;

THENCE, N 90°00'00" W, leaving said common line and the approximate centerline of said creek across said Larry Walker Tract 2 (recorded in D212048802), a distance of 256.37 feet to a point at the beginning of a curve to the right, whose radius is 55.00 feet and whose long chord bears S 64°23'34" W, a chord distance of 67.40 feet;

THENCE along said curve in a southwesterly direction, crossing the common line of said Larry Walker Tract 2 (recorded in D212048802) and said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257), and continuing, in all, through a central angle of 75°34'15", an arc distance of 72.54 feet to a point;

THENCE, S 45°58'27" W, across said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257), a distance of 232.64 feet to a point in the northeasterly line of East Kennedale Parkway (Right-of-Way varies);

THENCE, N 42°26'58" W, along the northeasterly line of said East Kennedale Parkway, a distance of 58.44 feet to a point;

THENCE, N 45°58'27" E, leaving said northeasterly line, across said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257), a distance of 229.30 feet to a point at the beginning of a curve to the right, whose radius is 55.00 feet and whose long chord bears N 28°59'16" E, a chord distance of 74.49 feet;

THENCE along said curve in a northeasterly direction, crossing the common line of said Larry M. Walker tract (recorded in Vol. 9632, Pg. 257) and said Larry Walker Tract 3 (recorded in D212279455), and continuing, in all, through a central angle of 85°14'35", an arc distance of 81.83 feet to a point

THENCE, N 00°00'00" E, crossing said Larry Walker Tract 3 (recorded in D212279455), said Larry Walker Tract 4 (recorded in D212279455) and said Larry Walker Tract 1 Parcel A, (recorded in D212279455), in all, a distance of 235.51 feet to a point in the north line of said Larry Walker Tract 1 Parcel A, (recorded in D212279455) and being in the south line of said Uselton tract;

THENCE, N 89°32'51" E, along the common line of said Larry Walker Tract 1 Parcel A, (recorded in D212279455) and said Uselton tract, a distance of 69.70 feet to a 1/2" iron rod found at the northeast corner of said Larry Walker Tract 1 Parcel A, (recorded in D212279455) and being the northwest corner of said Larry Walker Tract 4 (recorded in D212279455);

THENCE, S 89°33'48" E, along the common line of said Larry Walker Tract 4 (recorded in D212279455) and said Uselton tract, a distance of 149.79 feet to a point at the northeast corner of said Larry Walker Tract 4 (recorded in D212279455) at the southeast corner of said Uselton tract and being in the northwesterly line of said Larry Walker Tract 3 (recorded in D212279455);

THENCE N 47°27'09" E, along the common line of said Larry Walker Tract 3 (recorded in D212279455) and said Uselton tract, a distance of 221.18 feet to a point at the most north corner of said Larry Walker Tract 3 (recorded in D212279455), being the most easterly southeast corner of said Uselton tract and being in the approximate centerline of said creek;

THENCE N 15°38'01" W, along the common line of said Mark J. Duskocil tract (recorded in D214158489) and said Uselton tract, along the approximate centerline of said creek, a distance of 50.67 feet to a point at the northwest corner of said Mark J. Duskocil tract (recorded in D214158489) and being the southwest corner of said Mark J. Duskocil tract (recorded in D214158488);

THENCE N 07°43'55" E, along the common line of said Mark J. Duskocil tract (recorded in D214158488 and said Uselton tract) and along the approximate centerline of said creek, a distance of 92.23 feet to the POINT OF BEGINNING and containing 7.964 acres (346913 square feet) of land, more or less.



8221 Southwest Boulevard, Suite 100
Fort Worth, Texas 76132
(O) 817.231.8100 (F) 817.231.8144
Texas Registered Engineering Firm F-10998
Texas Registered Survey Firm F-10158800
www.barronstark.com

Survey Exhibit Showing
7.964 Situated in the
J.B. RENFRO SURVEY, ABSTRACT NO. 1260
City of Kennedale, Tarrant County, Texas

PROJECT No. 307-9537
DATE: FEBRUARY 2019
SHEET
2 OF 2

EXHIBIT B

DELIVERY AND RELEASE OF DEPOSIT AMOUNTS

DATE*	BEGINNING DATE	EXPIRATION DATE	AMOUNT BUYER DELIVERS TO ESCROW	AMOUNT NON-REFUNDABLE TO BUYER (except as otherwise provided in the Contract)	AMOUNT APPLICABLE TO PURCHASE PRICE
Effective Date	Date Escrow Agent receipts fully-executed Contract				
Earnest Money Deposit	3 days after the Effective Date		\$500 for Feasibility Period		Yes
Feasibility Period		August 1 st , 2019			
Delivery of Fee for Extension		August 1 st , 2019	\$500	\$0	Yes
Extension	August 1 st , 2019	September 1 st , 2019			
Last Day to Close		September 1 st , 2019	<p>If Closing occurs, Buyer will deliver the Balance of Purchase Price at Closing</p> <p>If Closing does not occur, no amount will be delivered</p>	<p>If Closing occurs, Buyer will deliver the Balance of Purchase Price at Closing.</p> <p>If Closing does not occur, no amount will be delivered; however, Seller will keep the amounts previously released as set forth above</p>	Yes

* If any of the above dates occur on a weekend or a holiday, the applicable date will move forward to the next available business day.

Buyer: *h* Seller: *B*

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Larry Walther ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 7.764 acres of land located at 113 E. Kennedale Parkway, Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Project").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Project for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Project ("Option").

2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect January 15th 2019 (Termination Date"). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").

3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

(b) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(c) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Option nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(d) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Project as long as the Option Agreement is in effect.

4. Purchase Price. The purchase price for the Property shall be \$900,000.00.

5. Time of the Essence. Time is of the essence with regard to all time periods and deadlines stated in this Option Agreement.

6. Governing Law and Venue. This Option Agreement shall be construed in accordance with and the rights and remedies of the parties determined under the laws of the State of Texas. The parties agree that exclusive venue for any suit or proceeding relating to this Option Agreement, including the enforcement thereof, shall be in Tarrant County, Texas.

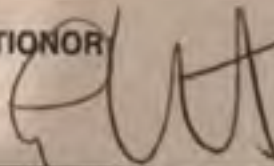
7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.

8. Amendment. This Option Agreement may only be amended by a written instrument signed by Optionor and Optionee or their respective successors and permitted assigns.

9. Counterparts. This Option Agreement may be executed in counterparts and all such counterparts shall constitute one single agreement.

Executed to be effective as of the date set forth above.

OPTIONOR



11-19-18

Larry Walther
PO Box 33346
Fort Worth, TX 76162

OPTIONEE:

OM HOUSING, LLC

By:



Deepak P. Sulakhe, President and CEO

From: Jason Lain <jlain@omhousing.com>
Sent: Monday, January 7, 2019 4:20 PM
To: sarah@sarahandersonconsulting.com; Alyssa Carpenter
Cc: Deepak P. Sulakhe
Subject: FW: EOA Consideration Acknowledgment

Follow Up Flag: Follow up
Flag Status: Flagged

Acknowledgement for second site is below.

Sincerely,



Jason G. Lain, MDiv, MA, Broker
Director of Acquisitions
Central: (972) 836-7232
Cell: (325) 660-7232
Fax (214) 594-9753
Email: jlain@omhousing.com



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<http://www.trec.state.tx.us/pdf/contracts/IABS1-0.pdf> - Texas Law requires all real estate licensees to provide the information about the brokerage services found in this link.

From: Larry Walther <larry.walther@usu.edu>
Date: Monday, January 7, 2019 at 4:15 PM
To: Jason Lain <jlain@omhousing.com>
Cc: "Deepak P. Sulakhe" <dsulakhe@omhousing.com>
Subject: RE: EOA Consideration Acknowledgment

I acknowledge that the \$500 option fee was received and that that option agreement is binding through January 20. Larry

From: Jason Lain <jlain@omhousing.com>
Sent: Monday, January 7, 2019 1:41 PM
To: Larry Walther <larry.walther@usu.edu>
Cc: Deepak P. Sulakhe <dsulakhe@omhousing.com>
Subject: EOA Consideration Acknowledgment

Larry, could we get an email from you acknowledging that you received the \$500 Consideration fee for the EOA? The State requires that we have something from you (can be email) simply stating it's been received. Thank you so much for your help!

Sincerely,



Jason G. Lain, MDiv, MA, Broker
Director of Acquisitions
Central: (972) 836-7232
Cell: (325) 660-7232
Fax (214) 594-9753
Email: jlain@omhousing.com



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<http://www.trec.state.tx.us/pdf/contracts/IABS1-0.pdf> - Texas Law requires all real estate licensees to provide the information about the brokerage services found in this link.

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Mark Jason Doskocil ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 8.021 acres located at 345 & 337 Kennedale Sublet Rd., Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Property").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Property for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Property ("Option").
2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect January 15th 2019 (Termination Date"). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").
3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

(b) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(c) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Optionor nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(d) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Property as long as the Option Agreement is in effect.

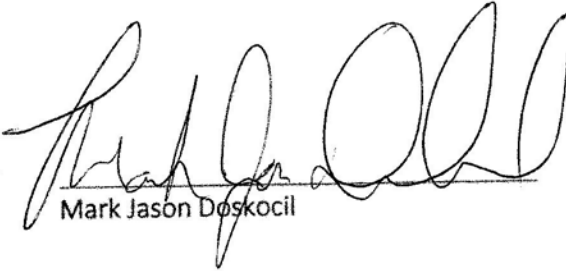
4. Purchase Price. The purchase price for the Property shall be \$595,000.
5. Time of the Essence. Time is of the essence with regard to all time periods and deadlines stated in this Option Agreement.
6. Governing Law and Venue. This Option Agreement shall be construed in accordance with and the rights and remedies of the parties determined under the laws of the State of Texas. The parties agree that exclusive venue for any suit or proceeding relating to this Option Agreement, including the enforcement thereof, shall be in Tarrant County, Texas.
7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.
8. Amendment. This Option Agreement may only be amended by a written instrument signed by Optionor and Optionee or their respective successors and permitted assigns.
9. Counterparts. This Option Agreement may be executed in counterparts and all such counterparts shall constitute one single agreement.

(SIGNATURE PAGE ON NEXT SHEET)

Executed to be effective as of the date set forth above.

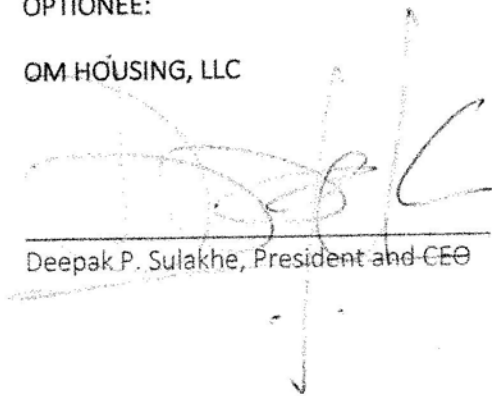
OPTIONOR:

Mark Jason Daskocil
4408 Barnett Blvd.,
Arlington, TX 76017

By: 
Mark Jason Daskocil

OPTIONEE:

QM HOUSING, LLC

By: 
Deepak P. Sulakhe, President and CEO

Subject: FW: Acknowledgement of Consideration for EOA

From: Daskocil Properties <jason@dpmrealty.com>

Date: Monday, January 7, 2019 at 3:04 PM

To: Jason Lain <jlain@omhousing.com>

Subject: Re: Acknowledgement of Consideration for EOA

Yes I received the \$500 option fee for the purchase of 337 Kennedale Sublett Rd.
Thank you,

On Mon, Jan 7, 2019 at 2:42 PM Jason Lain <jlain@omhousing.com> wrote:

Jason, could we get an email from you acknowledging that you received the \$500 Consideration fee for the EOA? The State requires that we have something from you (can be email) simply stating it's been received. Thank you so much for your help!

Sincerely,



Jason G. Lain, MDiv, MA, Broker

Director of Acquisitions

Central: (972) 836-7232

Cell: (325) 660-7232

Fax (214) 594-9753

Email: jlain@omhousing.com



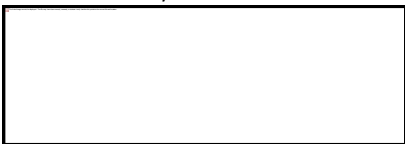
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<http://www.trec.state.tx.us/pdf/contracts/IABS1-0.pdf> - Texas Law requires all real estate licensees to provide the information about the brokerage services found in this link.

--

Jason Duskocil
Broker/Owner



Office (817) 472-5455
Cell (817) 229-9773
Fax (817) 784-0703
jason@dpmrealty.com

[Information About Brokerage Service as required by Texas Law](#)

19315
Administrative Deficiency Notice(s)

From: [Shannon Roth](#)
To: dsulakhe@omhousing.com; [Alyssa Carpenter](#)
Cc: [Shannon Roth](#)
Subject: 19315 Hammack Creek Apts - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Date: Tuesday, April 23, 2019 10:08:04 AM
Importance: High

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

- 1. Site Control:** Confirm each of the separate option is still valid or submit evidence that Deepak Sulakhe has site control as the two options that were submitted do not appear to indicate that he has site control. Has he closed on the two separate options? If so, provide an executed settlement statement for each transaction.
- 2. Architect Drawings:** The floor plan for the leasing center/club doesn't appear to have the dimensions included.
- 3. Parking:** Confirm the number of parking spaces to be provided. It should be noted if there will be any carports or garages. The number of parking spaces on the site plan should be consistent with the Tab 23c Accessible Parking Calculation Form as well as the Specifications and Building/Unit Type Configuration Form.
- 4. Tab 23:** Submit executed Accessibility Forms. All should be consistent with all other parts of the Application and Architectural drawings.
- 5. Annual Operating Expenses:** Revise and resubmit to include the description of "Other" under the General & Administrative Expenses section. Furthermore, under "Other Expenses" at the bottom of the page, you must include the TDHCA Compliance Fee, it appears as though the Direct Loan Compliance Fees were included in error as no Direct Loan funds were requested.
- 6. Site Work Costs:** The Site Work Costs form shows an amount of \$2,346,841 which is inconsistent with the Development Cost Schedule. Provide an explanation.
- 7. Site Design and Development Feasibility Report:** The submitted feasibility report indicates the development will have 110 units; which is inconsistent with the application. Identify where in the Report a preliminary site plan has been included with a statement that the plan materially adheres to all applicable zoning, site development, and building code ordinances was submitted.

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §§11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

****All deficiencies must be corrected or clarified by 5 pm Austin local time on April 30, 2019.
Please respond to this email as confirmation of receipt.****

****All deficiencies must be corrected or clarified by 5 pm Austin local time on
April 30, 2019.****

****Please respond to this email as confirmation of receipt.****

Thanks.

Shannon Roth

Multifamily Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3929
Fax: 512.475.1895

About TDHCA

The Texas Department of Housing and Community Affairs is committed to expanding fair housing choice and opportunities for Texans through the administration and funding of affordable housing and homeownership opportunities, weatherization, and community-based services with the help of for-profits, nonprofits, and local governments. For more information about fair housing, funding opportunities, or services in your area, please visit www.tdhca.state.tx.us or the [Learn about Fair Housing in Texas](#) page.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

19315
Deficiency Response(s)

19315 Hammack Creek Apartments
Full Application Deficiency Response 4/29/19

1. The option agreement expiration dates were extended multiple times and contracts were executed on February 28, 2019. Please find those documents attached. Site control was maintained through the entire application acceptance period and is still valid.
2. Please find a revised plan for the leasing center/club that includes dimensions.
3. There are 223 total surface parking spaces with no carports or garages. Please find a revised Site Plan with 11 total accessible parking spaces.
4. Please find Tab 23 accessibility forms.
5. Please find a revised Annual Operating Expenses.
6. The total site work cost stated at the bottom of Column G on the signed site work form includes Engineering and Architectural (E/A) costs detailed in Column F. Those E/A costs were already accounted for and included in the Development Cost Schedule under soft costs in the appropriate line item(s). Therefore, the sum total of the site work costs (\$2,133,492) detailed in Column D match up with the sum total of site work costs (\$2,006,492) plus fencing (\$127,000) detailed in the Development Cost Schedule.
7. Please find a revised Site Design Report uploaded separately that has unit total corrections in red and the site plan statement added.



**TEXAS ASSOCIATION OF REALTORS®
COMMERCIAL CONTRACT - UNIMPROVED PROPERTY**

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
©Texas Association of REALTORS®, Inc. 2014

1. PARTIES: Seller agrees to sell and convey to Buyer the Property described in Paragraph 2. Buyer agrees to buy the Property from Seller for the sales price stated in Paragraph 3. The parties to this contract are:

Seller: Larry Walther

Address: P.O. Box 33346 Fort Worth, TX 76162
 Phone: 817-992-6743 E-mail: larry.walther@usu.edu
 Fax: _____ Other: _____

Buyer: OM Housing, LLC

Attn. Deepak P. Sulakhe
 Address: 5033 Brookview Drive Dallas, TX 75220
 Phone: (214) 432-7610 E-mail: dsulakhe@omhousing.com
 Fax: (214) 594-9753 Other: _____

2. PROPERTY:

A. "Property" means that real property situated in Tarrant County, Texas at 133 E. Kennedale Pkwy, Kennedale, TX (address) and that is legally described on the attached Exhibit _____ or as follows:

Approximately 7.764 Acres 113 E. Kennedale Parkway, Kennedale, Tarrant County, Texas

- B. Seller will sell and convey the Property together with:
- (1) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any ~~minerals~~ utilities, adjacent streets, alleys, strips, gores, and rights-of-way;
 - (2) Seller's interest in all leases, rents, and security deposits for all or part of the Property; and
 - (3) Seller's interest in all licenses and permits related to the Property.

*(Describe any exceptions, reservations, or restrictions in Paragraph 12 or an addendum.)
 (If mineral rights are to be reserved an appropriate addendum should be attached.)*

3. SALES PRICE:

A. At or before closing, Buyer will pay the following sales price for the Property:

(1) Cash portion payable by Buyer at closing	\$ <u>900,000.00</u>
(2) Sum of all financing described in Paragraph 4	\$ _____
(3) Sales price (sum of 3A(1) and 3A(2))	\$ <u>900,000.00</u>

B. Adjustment to Sales Price: (Check (1) or (2) only.)

(1) The sales price will not be adjusted based on a survey.

(2) The sales price will be adjusted based on the latest survey obtained under Paragraph 6B.

(a) The sales price is calculated on the basis of \$ _____ per:

(i) square foot of total area net area.

(ii) acre of total area net area.

(b) "Total area" means all land area within the perimeter boundaries of the Property. "Net area" means total area less any area of the Property within:

(i) public roadways;

(ii) rights-of-way and easements other than those that directly provide utility services to the Property; and

(iii) _____

(c) If the sales price is adjusted by more than _____ % of the stated sales price, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is less than the stated percentage, the adjustment to the sales price will be made to the cash portion of the sales price payable by Buyer.

4. **FINANCING:** Buyer will finance the portion of the sales price under Paragraph 3A(2) as follows:

A. Third Party Financing: One or more third party loans in the total amount of \$ _____ This contract:

(1) is not contingent upon Buyer obtaining third party financing.

(2) is contingent upon Buyer obtaining third party financing in accordance with the attached Commercial Contract Financing Addendum (TAR-1931).

B. Assumption: In accordance with the attached Commercial Contract Financing Addendum (TAR-1931), Buyer will assume the existing promissory note secured by the Property, which balance at closing will be \$ _____.

C. Seller Financing: The delivery of a promissory note and deed of trust to Seller under the terms of the attached Commercial Contract Financing Addendum (TAR-1931) in the amount of \$ _____.

5. **EARNEST MONEY:**

A. Not later than 3 days after the effective date, Buyer must deposit \$ 25,000.00 as earnest money with Stewart Title Company, Carol Erick (title company) at 17304 Preston Road, Suite 110, Dallas, Texas (address) _____ (closer). If Buyer fails to timely deposit the earnest money, Seller may terminate this contract or exercise any of Seller's other remedies under Paragraph 15 by providing written notice to Buyer before Buyer deposits the earnest money.

B. Buyer will deposit an additional amount of \$ _____ with the title company to be made part of the earnest money on or before:

(i) _____ days after Buyer's right to terminate under Paragraph 7B expires; or

(ii) _____

Buyer will be in default if Buyer fails to deposit the additional amount required by this Paragraph 5B within 3 days after Seller notifies Buyer that Buyer has not timely deposited the additional amount.

C. Buyer may instruct the title company to deposit the earnest money in an interest-bearing account at a federally insured financial institution and to credit any interest to Buyer.

6. TITLE POLICY AND SURVEY:

A. Title Policy:

Buyer, at Buyer's expense, shall obtain

(1) ~~Seller, at Seller's expense, will furnish Buyer~~ an Owner's Policy of Title Insurance (the title policy) issued by any underwriter of the title company in the amount of the sales price, dated at or after closing, insuring Buyer against loss under the title policy, subject only to:

- (a) those title exceptions permitted by this contract or as may be approved by Buyer in writing; and
- (b) the standard printed exceptions contained in the promulgated form of title policy unless this contract provides otherwise.

(2) The standard printed exception as to discrepancies, conflicts, or shortages in area and boundary lines, or any encroachments or protrusions, or any overlapping improvements:

- (a) will not be amended or deleted from the title policy.
- (b) will be amended to read "shortages in areas" at the expense of Buyer Seller.

(3) Within 30 days after the effective date, Seller will furnish Buyer a commitment for title insurance (the commitment) including legible copies of recorded documents evidencing title exceptions. Seller authorizes the title company to deliver the commitment and related documents to Buyer at Buyer's address.

B. Survey: Within 120 days after the effective date:

(1) Buyer will obtain a survey of the Property at Buyer's expense and deliver a copy of the survey to Seller. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition. Seller will reimburse Buyer -0- (insert amount) of the cost of the survey at closing, if closing occurs.

(2) Seller, at Seller's expense, will furnish Buyer a survey of the Property dated after the effective date. The survey must be made in accordance with the: (i) ALTA/ACSM Land Title Survey standards, or (ii) Texas Society of Professional Surveyors' standards for a Category 1A survey under the appropriate condition.

(3) Seller will deliver to Buyer and the title company a true and correct copy of Seller's most recent survey of the Property along with an affidavit required by the title company for approval of the existing survey. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller _____ (insert amount) of the cost of the new or updated survey at closing, if closing occurs.

C. Buyer's Objections to the Commitment and Survey:

(1) Within 30 days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, and any required survey, Buyer may object in writing to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a

special flood hazard area (an "A" or "V" zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date of Buyer's actual receipt of the survey; or (ii) of the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer's timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer's failure to timely object or terminate under this Paragraph 6C is a waiver of Buyer's right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

7. PROPERTY CONDITION:

A. Present Condition: Buyer accepts the Property in its present condition except that Seller, at Seller's expense, will complete the following before closing:

None. Buyer accepts the property at closing "as-is, where-is, and with all faults."

(see Section 12 / Addendum A)

B. Feasibility Period: Buyer may terminate this contract for any reason within _____ days after the effective date (feasibility period) by providing Seller written notice of termination. (Check only one box.)

(1) If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer less \$ 1,000.00 that Seller will retain as independent consideration for Buyer's unrestricted right to terminate. Buyer has tendered the independent consideration to Seller upon payment of the amount specified in Paragraph 5A to the title company. The independent consideration is to be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(1) or if Buyer fails to deposit the independent consideration, Buyer will not have the right to terminate under this Paragraph 7B.

(2) Not later than 3 days after the effective date, Buyer must pay Seller \$ _____ as independent consideration for Buyer's right to terminate by tendering such amount to Seller or Seller's agent. If Buyer terminates under this Paragraph 7B, the earnest money will be refunded to Buyer and Seller will retain the independent consideration. The independent consideration will be credited to the sales price only upon closing of the sale. If no dollar amount is stated in this Paragraph 7B(2) or if Buyer fails to pay the earnest money, Buyer will not have the right to terminate under this Paragraph 7B.

C. Inspections, Studies, or Assessments:

(1) During the feasibility period, Buyer, at Buyer's expense, may complete or cause to be completed any and all inspections, studies, or assessments of the Property (including all improvements and fixtures) desired by Buyer.

(2) Buyer must:

- (a) employ only trained and qualified inspectors and assessors;
- (b) notify Seller, in advance, of when the inspectors or assessors will be on the Property;
- (c) abide by any reasonable entry rules or requirements of Seller;
- (d) not interfere with existing operations or occupants of the Property; and
- (e) restore the Property to its original condition if altered due to inspections, studies, or assessments that Buyer completes or causes to be completed.

(3) Except for those matters that arise from the negligence of Seller or Seller's agents, Buyer is responsible for any claim, liability, encumbrance, cause of action, and expense resulting from Buyer's inspections, studies, or assessments, including any property damage or personal injury. Buyer will indemnify, hold harmless, and defend Seller and Seller's agents against any claim involving a matter for which Buyer is responsible under this paragraph. This paragraph survives termination of this contract.

D. Property Information:

if in possession with Seller,

- (1) Delivery of Property Information: Within 15 days after the effective date, Seller will deliver to Buyer: *(Check all that apply.)*
 - (a) copies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases;
 - (b) copies of all notes and deeds of trust against the Property that Buyer will assume or that Seller will not pay in full on or before closing;
 - (c) copies of all previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property;
 - (d) copies property tax statements for the Property for the previous 2 calendar years;
 - (e) plats of the Property;
 - (f) copies of current utility capacity letters from the Property's water and sewer service provider; and
 - (g) _____

- (2) Return of Property Information: If this contract terminates for any reason, Buyer will, not later than 10 days after the termination date: *(Check all that apply.)*
 - (a) return to Seller all those items described in Paragraph 7D(1) that Seller delivered to Buyer in other than an electronic format and all copies that Buyer made of those items;
 - (b) delete or destroy all electronic versions of those items described in Paragraph 7D(1) that Seller delivered to Buyer or Buyer copied; and
 - (c) deliver copies of all inspection and assessment reports related to the Property that Buyer completed or caused to be completed.

This Paragraph 7D(2) survives termination of this contract.

E. Contracts Affecting Operations: Until closing, Seller: (1) will operate the Property in the same manner as on the effective date under reasonably prudent business standards; and (2) will not transfer or dispose of any part of the Property, any interest or right in the Property, or any of the personal property or other items described in Paragraph 2B or sold under this contract. After the feasibility period ends, Seller may not enter into, amend, or terminate any other contract that affects the operations of the Property without Buyer's written approval.

8. LEASES:

- A. ~~Each written lease Seller is to assign to Buyer under this contract must be in full force and effect according to its terms. Seller may not enter into any new lease, fail to comply with any existing lease, or make any amendment or modification to any existing lease without Buyer's written consent. Seller must disclose, in writing, if any of the following exist at the time Seller provides the leases to the Buyer or subsequently occur before closing:~~
 - ~~(1) any failure by Seller to comply with Seller's obligations under the leases;~~
 - ~~(2) any circumstances under any lease that entitle the tenant to terminate the lease or seek any offsets or damages;~~
 - ~~(3) any advance sums paid by a tenant under any lease;~~

- ~~(4) any concessions, bonuses, free rents, rebates, brokerage commissions, or other matters that affect any lease; and~~
- ~~(5) any amounts payable under the leases that have been assigned or encumbered, except as security for loan(s) assumed or taken subject to under this contract.~~

B. ~~Estoppel Certificates: Within _____ days after the effective date, Seller will deliver to Buyer estoppel certificates signed not earlier than _____ by each tenant that leases space in the Property. The estoppel certificates must include the certifications contained in the current version of TAR Form 1938 - Commercial Tenant Estoppel Certificate and any additional information requested by a third party lender providing financing under Paragraph 4 if the third party lender requests such additional information at least 10 days prior to the earliest date that Seller may deliver the signed estoppel certificates.~~

9. **BROKERS:** See paragraph 12.

A. The brokers to this sale are:

Principal Broker: _____	Cooperating Broker: _____
Agent: _____	Agent: _____
Address: _____	Address: _____
Phone & Fax: _____	Phone & Fax: _____
E-mail: _____	E-mail: _____
License No.: _____	License No.: _____

- Principal Broker: *(Check only one box)*
- represents Seller only.
 - represents Buyer only.
 - is an intermediary between Seller and Buyer.
- Cooperating Broker represents Buyer.

B. *Fees: (Check only (1) or (2) below.)*
(Complete the Agreement Between Brokers on page 13 only if (1) is selected.)

- (1) Seller will pay Principal Broker the fee specified by separate written commission agreement between Principal Broker and Seller. Principal Broker will pay Cooperating Broker the fee specified in the Agreement Between Brokers found below the parties' signatures to this contract.
- (2) At the closing of this sale, Seller will pay:

Principal Broker a total cash fee of:	Cooperating Broker a total cash fee of:
<input type="checkbox"/> _____ % of the sales price.	<input type="checkbox"/> _____ % of the sales price.
<input type="checkbox"/> _____	<input type="checkbox"/> _____

The cash fees will be paid in _____ County, Texas. Seller authorizes the title company to pay the brokers from the Seller's proceeds at closing.

NOTICE: Chapter 62, Texas Property Code, authorizes a broker to secure an earned commission with a lien against the Property.

C. The parties may not amend this Paragraph 9 without the written consent of the brokers affected by the amendment.

10. CLOSING:

- A. The date of the closing of the sale (closing date) will be on or before the later of:
- (1) _____ days after the expiration of the feasibility period.
 - _____ (specific date).
 - 30 days after the expiration of the Feasibility Period, as same may be extended
 - (2) 7 days after objections made under Paragraph 6C have been cured or waived.
- B. If either party fails to close by the closing date, the non-defaulting party may exercise the remedies in Paragraph 15.
- C. At closing, Seller will execute and deliver, at Seller's expense, a general special warranty deed. The deed must include a vendor's lien if any part of the sales price is financed. The deed must convey good and indefeasible title to the Property and show no exceptions other than those permitted under Paragraph 6 or other provisions of this contract. Seller must convey the Property:
- (1) with no liens, assessments, or other security interests against the Property which will not be satisfied out of the sales price, unless securing loans Buyer assumes;
 - (2) without any assumed loans in default; and
 - (3) with no persons in possession of any part of the Property as lessees, tenants at sufferance, or trespassers except tenants under the written leases assigned to Buyer under this contract.
- D. At closing, Seller, at Seller's expense, will also deliver to Buyer:
- (1) tax statements showing no delinquent taxes on the Property;
 - (2) an assignment of all leases to or on the Property;
 - (3) to the extent assignable, an assignment to Buyer of any licenses and permits related to the Property;
 - (4) evidence that the person executing this contract is legally capable and authorized to bind Seller;
 - (5) an affidavit acceptable to the title company stating that Seller is not a foreign person or, if Seller is a foreign person, a written authorization for the title company to: (i) withhold from Seller's proceeds an amount sufficient to comply applicable tax law; and (ii) deliver the amount to the Internal Revenue Service (IRS) together with appropriate tax forms; and
 - (6) any notices, statements, certificates, affidavits, releases, and other documents required by this contract, the commitment, or law necessary for the closing of the sale and issuance of the title policy, all of which must be completed by Seller as necessary.
- E. At closing, Buyer will:
- (1) pay the sales price in good funds acceptable to the title company;
 - (2) deliver evidence that the person executing this contract is legally capable and authorized to bind Buyer;
 - (3) sign and send to each tenant in a lease for any part of the Property a written statement that:
 - (a) acknowledges Buyer has received and is responsible for the tenant's security deposit; and
 - (b) specifies the exact dollar amount of the security deposit;
 - (4) sign an assumption of all leases then in effect; and
 - (5) execute and deliver any notices, statements, certificates, or other documents required by this contract or law necessary to close the sale.
- F. ~~Unless the parties agree otherwise, the closing documents will be as found in the basic forms in the current edition of the State Bar of Texas Real Estate Forms Manual without any additional clauses.~~

11. POSSESSION: Seller will deliver possession of the Property to Buyer upon closing and funding of this sale in its present condition with any repairs Seller is obligated to complete under this contract, ordinary wear and tear excepted. Any possession by Buyer before closing or by Seller after closing that is not authorized by a separate written lease agreement is a landlord-tenant at sufferance relationship between the parties.

12. SPECIAL PROVISIONS: The following special provisions apply and will control in the event of a conflict with other provisions of this contract. (If special provisions are contained in an Addendum, identify the Addendum here and reference the Addendum in Paragraph 22D.)

See Addendum A attached hereto.

Seller reserves all oil, gas and other minerals but will waive surface rights subject to the rights of others under existing leases.

Buyer shall pay all broker fees owed to any party. Seller is not represented by a broker.

13. SALES EXPENSES:

- A. Seller's Expenses: Seller will pay for the following at or before closing:
- (1) releases of existing liens, other than those liens assumed by Buyer, including prepayment penalties and recording fees;
 - (2) release of Seller's loan liability, if applicable;
 - (3) tax statements or certificates;
 - (4) preparation of the deed;
 - (5) one-half of any escrow fee;
 - (6) costs to record any documents to cure title objections that Seller must cure; and
 - (7) other expenses that Seller will pay under other provisions of this contract.
- B. Buyer's Expenses: Buyer will pay for the following at or before closing:
- (1) all loan expenses and fees;
 - (2) preparation of any deed of trust;
 - (3) recording fees for the deed and any deed of trust;
 - (4) premiums for flood insurance as may be required by Buyer's lender;
 - (5) one-half of any escrow fee;
 - (6) other expenses that Buyer will pay under other provisions of this contract.

14. PRORATIONS:

- A. Prorations:
- (1) Interest on any assumed loan, taxes, rents, and any expense reimbursements from tenants will be prorated through the closing date.
 - (2) If the amount of ad valorem taxes for the year in which the sale closes is not available on the closing date, taxes will be prorated on the basis of taxes assessed in the previous year. If the taxes for the year in which the sale closes vary from the amount prorated at closing, the parties will adjust the prorations when the tax statements for the year in which the sale closes become available. This Paragraph 14A(2) survives closing.
 - (3) If Buyer assumes a loan or is taking the Property subject to an existing lien, Seller will transfer all reserve deposits held by the lender for the payment of taxes, insurance premiums, and other charges to Buyer at closing and Buyer will reimburse such amounts to Seller by an appropriate adjustment at closing.
- ~~B. Rollback Taxes: If Seller changes the use of the Property before closing or if a denial of a special valuation on the Property claimed by Seller results in the assessment of additional taxes, penalties, or interest (assessments) for periods before closing, the assessments will be the obligation of the Seller. If this sale or Buyer's use of the Property after closing results in additional assessments for periods before closing, the assessments will be the obligation of Buyer. This Paragraph 14B survives closing.~~
- C. Rent and Security Deposits: At closing, Seller will tender to Buyer all security deposits and the following advance payments received by Seller for periods after closing: prepaid expenses, advance rental



payments, and other advance payments paid by tenants. Rents prorated to one party but received by the other party will be remitted by the recipient to the party to whom it was prorated within 5 days after the rent is received. This Paragraph 14C survives closing.

15. DEFAULT:

- ~~any provision of this contract except paragraph 12 of Addendum A,~~
~~this contract. Buyer is in default and Seller, as Seller's sole remedy(ies),~~
~~may terminate this contract and receive the earnest money, as liquidated damages, for Buyer's failure~~
~~except for any damages resulting from Buyer's inspections, studies or assessments in accordance with~~
~~Paragraph 7C(3) which Seller may pursue, or~~
~~(Check if applicable)~~
 ~~enforce specific performance, or seek such other relief as may be provided by law.~~
 ~~If Buyer fails to comply with the provisions of paragraph 12 of Addendum A, Seller shall be entitled to seek damages or any other relief as may be provided by law.~~
- A. If Buyer fails to comply with ~~this contract~~, Buyer is in default and Seller, as Seller's sole remedy(ies), may terminate this contract and receive the earnest money, as liquidated damages, for Buyer's failure except for any damages resulting from Buyer's inspections, studies or assessments in accordance with Paragraph 7C(3) which Seller may pursue, or ~~(Check if applicable)~~ enforce specific performance, or seek such other relief as may be provided by law. If Buyer fails to comply with the provisions of paragraph 12 of Addendum A, Seller shall be entitled to seek damages or any other relief as may be provided by law.
- B. If, without fault, Seller is unable within the time allowed to deliver the estoppel certificates, survey or the commitment, Buyer may:
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
(2) extend the time for performance up to 15 days and the closing will be extended as necessary.
- C. Except as provided in Paragraph 15B, if Seller fails to comply with this contract, Seller is in default and Buyer may:
(1) terminate this contract and receive the earnest money, less any independent consideration under Paragraph 7B(1), as liquidated damages and as Buyer's sole remedy; or
(2) enforce specific performance, or seek such other relief as may be provided by law, or both.

16. CONDEMNATION: If before closing, condemnation proceedings are commenced against any part of the Property, Buyer may:

- A. terminate this contract by providing written notice to Seller within 15 days after Buyer is advised of the condemnation proceedings and the earnest money, less any independent consideration paid under Paragraph 7B(1), will be refunded to Buyer; or
- B. appear and defend in the condemnation proceedings and any award will, at Buyer's election, belong to:
(1) Seller and the sales price will be reduced by the same amount; or
(2) Buyer and the sales price will not be reduced.

17. ATTORNEY'S FEES: If Buyer, Seller, any broker, or the title company is a prevailing party in any legal proceeding brought under or with relation to this contract or this transaction, such party is entitled to recover from the non-prevailing parties all costs of such proceeding and reasonable attorney's fees. This Paragraph 17 survives termination of this contract.

18. ESCROW:

- A. At closing, the earnest money will be applied first to any cash down payment, then to Buyer's closing costs, and any excess will be refunded to Buyer. If no closing occurs, the title company may require payment of unpaid expenses incurred on behalf of the parties and a written release of liability of the title company from all parties.
- B. If one party makes written demand for the earnest money, the title company will give notice of the demand by providing to the other party a copy of the demand. If the title company does not receive written objection to the demand from the other party within 15 days after the date the title company sent the demand to the other party, the title company may disburse the earnest money to the party making demand, reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and the title company may pay the same to the creditors.

Commercial Contract - Unimproved Property concerning 133 E. Kennedale Pkwy, Kennedale, TX

- C. The title company will deduct any independent consideration under Paragraph 7B(1) before disbursing any earnest money to Buyer and will pay the independent consideration to Seller.
- D. If the title company complies with this Paragraph 18, each party hereby releases the title company from all claims related to the disbursal of the earnest money.
- E. ~~Notices under this Paragraph 18 must be sent by certified mail, return receipt requested. Notices to the title company are effective upon receipt by the title company.~~
- F. Any party who wrongfully fails or refuses to sign a release acceptable to the title company within 7 days after receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- G. Seller Buyer intend(s) to complete this transaction as a part of an exchange of like-kind properties in accordance with Section 1031 of the Internal Revenue Code, as amended. All expenses in connection with the contemplated exchange will be paid by the exchanging party. The other party will not incur any expense or liability with respect to the exchange. The parties agree to cooperate fully and in good faith to arrange and consummate the exchange so as to comply to the maximum extent feasible with the provisions of Section 1031 of the Internal Revenue Code. The other provisions of this contract will not be affected in the event the contemplated exchange ~~fails to occur~~ actual without any duty of inquiry

19. MATERIAL FACTS: To the best of Seller's actual knowledge and belief without any duty of inquiry (Check only one box.)

- A. Seller is not aware of any material defects to the Property except as stated in the attached Commercial Property Condition Statement (TAR-1408).
- B. Except as otherwise provided in this contract, Seller is not aware of:
 - (1) any subsurface structures, pits, waste, springs, or improvements;
 - (2) any pending or threatened litigation, condemnation, or assessment affecting the Property;
 - (3) any environmental hazards or conditions that materially affect the Property;
 - (4) whether the Property is or has been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground tanks or containers;
 - (5) whether radon, asbestos containing materials, urea-formaldehyde foam insulation, lead-based paint, toxic mold (to the extent that it adversely affects the health of ordinary occupants), or other pollutants or contaminants of any nature now exist or ever existed on the Property;
 - (6) any wetlands, as defined by federal or state law or regulation, on the Property;
 - (7) any threatened or endangered species or their habitat on the Property;
 - (8) any present or past infestation of wood-destroying insects in the Property's improvements;
 - (9) any contemplated material changes to the Property or surrounding area that would materially and detrimentally affect the ordinary use of the Property;
 - (10) any condition on the Property that violates any law or ordinance.

(Describe any exceptions to (1)-(10) in Paragraph 12 or an addendum.)

20. NOTICES: All notices between the parties under this contract must be in writing and are effective when hand-delivered, mailed by certified mail return receipt requested, or sent by facsimile transmission to the parties addresses or facsimile numbers stated in Paragraph 1. The parties will send copies of any notices to the broker representing the party to whom the notices are sent.

- A. Seller also consents to receive any notices by e-mail at Seller's e-mail address stated in Paragraph 1.
- B. Buyer also consents to receive any notices by e-mail at Buyer's e-mail address stated in Paragraph 1.

21. DISPUTE RESOLUTION: The parties agree to negotiate in good faith in an effort to resolve any dispute related to this contract that may arise. If the dispute cannot be resolved by negotiation, the parties will submit the dispute to mediation before resorting to arbitration or litigation and will equally share the costs of

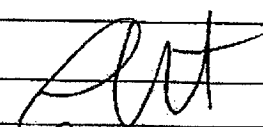
receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in the notice or at closing of purchase of the real property." The real property is described in Paragraph 2 of this contract.

- D. If the Property adjoins or shares a common boundary with the tidally influenced submerged lands of the state, §33.135 of the Texas Natural Resources Code requires a notice regarding coastal area property to be included as part of this contract.
- E. If the Property is located seaward of the Gulf Intracoastal Waterway, §61.025, Texas Natural Resources Code, requires a notice regarding the seaward location of the Property to be included as part of this contract.
- F. If the Property is located outside the limits of a municipality, the Property may now or later be included in the extra-territorial jurisdiction (ETJ) of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and ETJ. To determine if the Property is located within a municipality's ETJ, Buyer should contact all municipalities located in the general proximity of the Property for further information.
- G. Brokers are not qualified to perform property inspections, surveys, engineering studies, environmental assessments, or inspections to determine compliance with zoning, governmental regulations, or laws. Buyer should seek experts to perform such services. Buyer should review local building codes, ordinances and other applicable laws to determine their effect on the Property. Selection of experts, inspectors, and repairmen is the responsibility of Buyer and not the brokers. Brokers are not qualified to determine the credit worthiness of the parties.

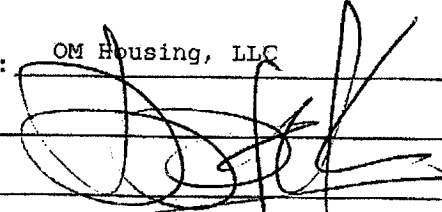
26. CONTRACT AS OFFER: The execution of this contract by the first party constitutes an offer to buy or sell the Property. Unless the other party accepts the offer by 5:00 p.m., in the time zone in which the Property is located, on ~~02.18.2019~~ 2-28-19, the offer will lapse and become null and void.

READ THIS CONTRACT CAREFULLY. The brokers and agents make no representation or recommendation as to the legal sufficiency, legal effect, or tax consequences of this document or transaction. **CONSULT your attorney BEFORE signing.**

Seller: Larry Walther

By: 
By (signature): _____
Printed Name: LARRY WALTHER
Title: _____
By: _____
By (signature): _____
Printed Name: _____
Title: _____

Buyer: OM Housing, LLC

By: 
By (signature): _____
Printed Name: Deepak P. Sulakhe
Title: President / CEO
By: _____
By (signature): _____
Printed Name: _____
Title: _____

AGREEMENT BETWEEN BROKERS

(use only if Paragraph 9B(1) is effective)

Principal Broker agrees to pay _____ (Cooperating Broker) a fee when the Principal Broker's fee is received. The fee to be paid to Cooperating Broker will be:

- \$ _____, or
- _____ % of the sales price, or
- _____ % of the Principal Broker's fee.

The title company is authorized and directed to pay Cooperating Broker from Principal Broker's fee at closing. This Agreement Between Brokers supersedes any prior offers and agreements for compensation between brokers.

Principal Broker: _____ Cooperating Broker: _____

By: _____ By: _____

ATTORNEYS

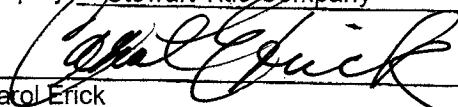
Seller's attorney: <u>Robert C. Stroup</u>	Buyer's attorney: <u>Clifford L. Friedman</u>
Address: <u>2501 Parkview Drive, Suite 210</u> <u>Fort Worth, Texas 76102</u>	Address: <u>Smith, Stern, Friedman & Nelms, PC</u> <u>14160 Dallas Parkway, Suite 800,</u> <u>Dallas, Texas 75254</u>
Phone & Fax: <u>817-336-1188/817-336-1194</u>	Phone & Fax: <u>(214) 739-0606 / Fax: (214) 739-0608</u>
E-mail: <u>robert@thestruplawfirm.com</u>	E-mail: <u>cfriedman@ssfnlaw.com</u>

Seller's attorney requests copies of documents, notices, and other information:
 the title company sends to Seller.
 Buyer sends to Seller.

Buyer's attorney requests copies of documents, notices, and other information:
 the title company sends to Buyer.
 Seller sends to Buyer.

ESCROW RECEIPT

The title company acknowledges receipt of:
 A. the contract on this day February 28, 2019 (effective date);
 B. earnest money in the amount of \$ 35,000.00 in the form of Company Check #1940 on March 1, 2019.

Title company: <u>Stewart Title Company</u>	Address: <u>15950 Dallas Parkway, Suite 100</u> <u>Dallas, TX 75248</u>
By: <u></u> <u>Carol Erick</u>	Phone & Fax: <u>214-473-5414 F. 833-431-4776</u>
Assigned file number (GF#): _____	E-mail: <u>Carol.Erick@Stewart.com</u>

ADDENDUM A

TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY

THIS ADDENDUM A TO COMMERCIAL CONTRACT - UNIMPROVED PROPERTY is attached to, and made a part of, that Commercial Contract - Unimproved Property (the "**Contract**") executed by **OM Housing, LLC**, a Texas limited liability company (together with its successors and/or assigns, "**Buyer**"); and **Larry Walther** (together with his successors and/or assigns, "**Seller**") (Buyer and Seller are collectively referred to as the "**Parties**", and each a "**Party**"). In the event the terms of this Addendum A conflict with the terms of the Contract, the terms of this Addendum A shall control. All references to the terms "contract" in the Contract shall mean the Contract as amended by this Addendum A.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Feasibility Period.** The first sentence of Paragraph 7.B is hereby deleted in its entirety and replaced with the following:

"Buyer may terminate this contract for any reason on or before August 1st 5th, 2019, (Feasibility Period) by providing Seller written notice of Termination (~~Check only one box~~).

Extensions. Buyer shall have the right to extend the Feasibility Period for ~~two~~ eight (82) additional periods (1) ~~from August 5th, 2019 to January 5th, 2020 and (2) from January 6th, 2020 to April 5th, 2020~~ of one (1) month each. Buyer must request the first ~~each~~ extension period by delivering (a) written notice thereof to Seller, and (b) a \$95,000 Extension Payment to ~~escrow agent~~ Seller by cashier's check or wire transfer, both prior to the expiration of the Feasibility Period, as it may be extended. Buyer ~~must request the second extension period by delivering (a) written notice thereof to Buyer, and (b) a \$5,000 Extension Payment to escrow agent, both prior to the expiration of the Feasibility Period.~~ The Earnest Money Extension Payments shall NOT be applicable to the Purchase Price at Closing."

~~Subject to the terms of Paragraph 7.B(1) of the Contract, the Earnest Money shall be disbursed by escrow agent to Buyer if Buyer gives written notice to escrow agent on or before the end of the Feasibility Period per Exhibit B, stating that Buyer has terminated the Contract. Such notice by Buyer shall be conclusive evidence of Buyer's right to receive the earnest money. Seller and Buyer irrevocable instruct escrow agent to disburse the earnest money to Buyer upon receipt of said notice, without any other written authorization and without further verification of the party entitled to receive the earnest money. Seller and Buyer agree to indemnify and hold escrow agent harmless for making any disbursement in an attempt to comply with the provisions hereof. Escrow Agent may rely upon any document or copy which it believes to be genuine, may assume that the Party executing any document is authorized to do so, and shall not be liable for anything, which it in good faith, may or may not do in connection herewith.~~

2. **Inspections.** Paragraph 7.C(1) is hereby amended by adding the following thereto:

"Such inspections, studies and assessments may include, without limitation, one or more environmental site assessments, including without limitation, borings and other physical samplings."



3. **Leases.** Paragraph 8 is hereby deleted in its entirety and replaced with the following:

"Notwithstanding anything to the contrary set forth in this contract, Seller represents and warrants to Buyer that (a) there are no outstanding written or oral leases in any way affecting the Property, (b) no person or entity has any right with respect to all or any portion of the Property (whether by option to purchase, right of first refusal, contract or otherwise) that may prevent or interfere with Buyer taking title to, and exclusive possession of, all of the Property at closing, and (c) Seller shall not enter into any new lease with respect to the Property during the pendency of this contract without Buyer's prior written consent, which may be given or withheld by Buyer in Buyer's sole and absolute discretion." This shall not apply to any mineral lease contracts or conveyances. Minerals are not being conveyed.

4. NA

5. **Rollback Taxes.** Paragraph 14.B is hereby deleted and replaced with the following:

~~"Rollback Taxes. If the sale contemplated hereby, a change in the use of the Property, or denial of any special use valuation of the Property would result in the assessment after the closing of additional taxes and interest applicable to the period of time before the closing ("**Rollback Taxes**"), then Seller shall give a credit to Buyer at the closing for 100% of the amount of the Rollback Taxes (including interest and penalties) that may be assessed after the closing as reasonably estimated by the title company, and Buyer shall be responsible for the payment of the Rollback Taxes (including interest and penalties) if and when assessed after the closing. There will be no subsequent adjustment notwithstanding whether the actual Rollback Taxes assessed after the closing differ from the estimate used at the closing. If any Rollback Taxes are due before the closing due to Seller's change in use of the Property or a denial of a special use valuation of the Property, then Seller shall pay those Rollback Taxes (including any interest and penalties) at or before the closing." Seller represents that no rollback taxes will be due and owing for periods prior to closing.~~

6. **Default.** Paragraph 15.C(1) is hereby deleted and replaced with the following:

~~"(1) terminate this contract and receive the Earnest Money, less any independent consideration under Paragraph 7.B(1), together with Seller's reimbursement of Buyer's reasonable out of pocket expenses incurred in connection with its due diligence inspection of the Property, as Buyer's sole remedy; or" [deleted]~~

7. **Material Facts.** Paragraph 19.B is hereby amended by adding the following:

"(11) any proposed special assessments or condemnation; pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel; and

(12) any existing or proposed plans to widen, modify or realign any street adjoining or adjacent to the Property, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads.



Seller shall fully disclose to Buyer, promptly upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the closing date that may affect the representations and warranties set forth above. ~~The representations and warranties of Seller contained herein shall survive the closing and delivery of the Deed.~~"

8. ~~**Notices.** Paragraph 20 is hereby amended by adding the following:~~

~~"Notices sent by facsimile and/or e-mail shall not be effective until the sending party receives confirmation that the notice has been received by the receiving party."~~~~[deleted]~~

9. ~~**NA**~~

10. ~~**Closing Conditions.** In addition to any other conditions set forth in the Contract, Buyer shall not be obligated to close this transaction and purchase the Property unless each of the following are either timely satisfied or waived by Borrower in writing:~~

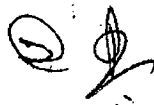
a. ~~**Subdivided.** At or prior to closing, if the Property is part of a larger parcel belonging to Seller, the Property shall be subdivided from the larger parcel and/or platted. Conversely, if Property is part of several smaller parcels belonging to Seller, the Property shall be combined into a single parcel and/or platted.~~ ~~[deleted]~~

b. ~~**Utilities.** Prior to closing, Buyer shall have received utility will-serve letters confirming that all necessary utilities are available in sufficient capacity to service the Property for its intended purpose without unusual or extraordinary expense to Buyer other than standard "tap in" fees.~~

c. ~~**Governmental Approvals.** Prior to closing, Buyer shall have received all necessary and customary governmental approvals necessary for Buyer to develop and operate the Property for its intended purpose, including without limitation, those for utilities, zoning, special uses, building construction, site construction and off-site improvements (such as road widening easements and permits from applicable departments of transportation, and ingress/egress easements), and/or approval of a final site plan for the proposed development along with utility commitments and required capacity for the intended number of units. All such approvals, permits and allocations, and any conditions imposed thereon, must be acceptable to Buyer in its sole discretion.~~

d. ~~**Zoning.** At closing the Property shall be zoned to permit the development of the Property for Buyer's intended purpose.~~ ~~[deleted]~~

In the event that any condition precedent in this Section 10 is not satisfied by the date specified in this Section 10, Buyer shall have the right to terminate the Contract by delivering written notice thereof to Seller, and Buyer shall receive a full and prompt refund of the earnest money (less the independent consideration referenced in Paragraph 7.B(1) of the contract and not including any Extension Payments made to Seller) ~~in accordance to Exhibit B, together with accrued interest thereon, without the need for Seller's consent for its release.~~



11. **Seller's Representations and Warranties.** To the best of Seller's actual knowledge, without any duty of inquiry, Seller represents and warrants to Buyer as follows:

- a. **No Notices.** Seller has not received any notice of, ~~and to the best of its knowledge and~~ there are no (i) proposed special assessments or condemnation; (ii) pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel.
- b. **Access.** Seller has not received notice of any existing or proposed plans to widen, modify or realign any street adjoining or adjacent to the Property, and the Property has full and free access to and from public highways, streets and roads. ~~Seller has no knowledge of any~~ There is no pending or threatened proceeding by any governmental authority, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads
- c. **Utility Availability.** ~~Public water, sanitary and storm sewer, electricity, gas, and other required utilities (i) are available to the Property in quantities sufficient for the successful operation of the Property for its intended purpose; (ii) enter the Property through adjoining public streets or, if passing through adjoining private land, do so in accordance with recorded public or private easements; and (iii) are serviced and maintained by the appropriate public or quasi-public entity.~~ [deleted]
- d. **Utility District.** The Property is not situated in a utility or other statutorily created district providing water, sewer, drainage or flood control facilities and services.
- e. **Pipelines.** There are no transportation pipelines, including without limitation, pipelines for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product or hazardous substance, located on, under or within the Property.
- f. **Owners' Association.** The Property is not subject to mandatory membership in a property owners' association.
- g. **Litigation.** There is no pending or threatened litigation, arbitration, administrative action or examination, claim or demand whatsoever related to the Property; and no attachments, execution proceedings, liens, assignments or insolvency proceedings are pending or threatened against Seller of the Property or contemplated by Seller.

Seller shall timely and fully disclose to Buyer, ~~immediately upon its occurrence,~~ any change in facts, assumptions or circumstances of which Seller becomes aware prior to the closing date that may affect the representations and warranties set forth above. ~~The representations and warranties of Seller contained herein shall survive the closing and delivery of the Deed.~~

12. **Plans and Approvals.** Buyer shall have the right to file, at Buyer's expense, any and all applications and plans necessary to obtain building permits, any rezoning or subdivision (or the vacation of any existing subdivision or plat) and/or any other agreement, assurance, approval or permit from any and all governmental authorities having jurisdiction over the Property that Buyer deems appropriate in connection with the intended purpose of the



Property. Seller agrees to join in the execution of any application required in order to obtain any such agreement, assurance, permit or approval (or file such application individually if the relevant governmental authority shall so require). Seller further agrees to cooperate with Buyer or its nominee in all respects, including without limitation, attending and giving favorable testimony at any hearings on the petitions or applications, meeting with and providing information to public and private utilities and governmental and quasi-governmental entities, and otherwise working to obtain the agreements, assurances, approvals and permits required by Buyer or its nominee without additional cost or obligation to Buyer or its nominee. NOTWITHSTANDING THE FOREGOING, SELLER SHALL NOT BE REQUIRED TO EXECUTE ANY DOCUMENT REFERRED TO ABOVE OR OTHERWISE COOPERATE IN ANY MANNER DESCRIBED ABOVE UNLESS BUYER HAS PAID SELLER THE SUM OF \$100,000.00 (P&Z CONSIDERATION). THE P&Z CONSIDERATION SHALL APPLY TO THE PURCHASE PRICE AT CLOSING BUT SHALL OTHERWISE BE NON-REFUNDABLE. IN THE EVENT BUYER FAILS TO COMPLY WITH THESE PROVISIONS, SELLER SHALL, NOTWITHSTANDING PARAGRAPH 15 OF THE CONTRACT, BE ENTITLED TO SEEK DAMAGES OR ANY OTHER RELIEF AS MAY BE PROVIDED BY LAW.

13. **Survey.** ~~Seller agrees to credit the purchase price in the amount of \$0 at closing to reimburse Buyer for the cost of the survey. [deleted]~~

14. **Financing.** Buyer shall have the right to terminate the Contract if Buyer does not secure financing on terms acceptable to Buyer in Buyer's sole and absolute discretion, by delivering written notice thereof to Seller, and Buyer shall receive a full and prompt refund of the earnest money (less the independent consideration referenced in Paragraph 7.B(1) of the Contract ~~and not including any Extension Payments made to Seller~~) in accordance with Exhibit B, ~~together with accrued interest thereon, without the need for Seller's signature for its release.~~

15. **Right to Terminate.** Subject to the terms of other terms of the Contract regarding disbursement of the earnest money, Buyer shall have the right to terminate the Contract at any time prior to closing.

16. **Effect of Termination.** The Contract shall be void and of no further force and effect upon any proper termination under the terms of the Contract (other than terms that specifically provide that they survive termination of the Contract).

17. **Contract Dates.** If any of the contract dates occur on a weekend or a State of Texas or federal holiday, the applicable date will move forward to the next available business day.

EXHIBIT B

DELIVERY AND RELEASE OF DEPOSIT AMOUNTS

* If any of the above dates occur on a weekend or a holiday, the applicable date will move forward to the next available business day.

() 

EXHIBIT A

Legal Description

(to be attached)

(2) 

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Larry Walther ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 7.764 acres of land located at 113 E. Kennedale Parkway, Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Project").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Project for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Project ("Option").

2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect January 15th 2019 (Termination Date"). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").

3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

(b) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(c) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Option nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(d) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Project as long as the Option Agreement is in effect.

4. Purchase Price. The purchase price for the Property shall be \$900,000.00.

5. Time of the Essence. Time is of the essence with regard to all time periods and deadlines stated in this Option Agreement.

6. Governing Law and Venue. This Option Agreement shall be construed in accordance with and the rights and remedies of the parties determined under the laws of the State of Texas. The parties agree that exclusive venue for any suit or proceeding relating to this Option Agreement, including the enforcement thereof, shall be in Tarrant County, Texas.

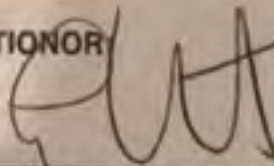
7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.

8. Amendment. This Option Agreement may only be amended by a written instrument signed by Optionor and Optionee or their respective successors and permitted assigns.

9. Counterparts. This Option Agreement may be executed in counterparts and all such counterparts shall constitute one single agreement.

Executed to be effective as of the date set forth above.

OPTIONOR



11-19-18

Larry Walther
PO Box 33346
Fort Worth, TX 76162

OPTIONEE:

OM HOUSING, LLC

By:


Deepak P. Sulakhe, President and CEO

EXHIBIT A

A Larry Walther Tract

	Parcel	Abstract	Tract	Acreage
1	Parcel 1: Jesse B Survey Renfro Address 133 E Kennedale pkwy Zoning: "C-2" general commercial district	1260	3e01	0.52
2	Parcel 2: Jesse B Renfro Survey Situs 129 E Kennedale Pkwy Zoning: split zoning, "AG" agricultural and "C-2"	1260	3e01a	1.45
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5	Parcel 5: Jesse B Renfro Survey Situs 109 E Kennedale Pkwy Zoning: C-2	1260	3g02a	0.03
6	Parcel 6: Jesse B Renfro Survey Situs 113 E Kennedale Pkwy Zoning: C-2	1260	3g06	0.06
7	Parcel 7: Jesse B Renfro Survey Situs 111 E Kennedale Pkwy Zoning: C-2	1260	3g09	0.23

8	Parcel 8:	1260	3e1b and 3g2 - City map also shows as A1260 3e1b20	1.682
	Jesse B Renfro Survey			
	Situs 121 E Kennedale Pkwy			
	Zoning: split zoning, AG and C-2			
9	Parcel 9:	1260	3g7 and 3g11	0.89
	Jesse B Renfro Survey			
	Situs 406 Crestview Dr			
	Zoning: AG			

7.652

EXCLUSIVE OPTION AGREEMENT

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WHEREAS, Optionee is considering purchasing from Optionor approximately 7.764 acres of land located at 113 E. Kennedale Parkway, Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Project").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Project for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Project ("Option").

2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect January ~~15th~~ 20th 2019 (Termination Date"). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").

3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

(b) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(c) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Option nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(d) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Project as long as the Option Agreement is in effect.

4. Purchase Price. The purchase price for the Property shall be \$900,000.00.

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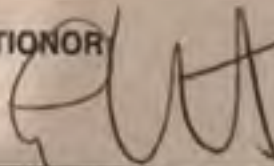
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11-19-18

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OPTIONEE:

OM HOUSING, LLC

By:



Deepak P. Sulakhe, President and CEO

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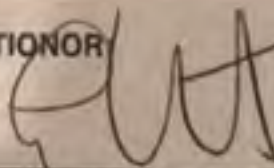
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11-19-18

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By:



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	Situs 121 E Kennedale Pkwy			
	Zoning: split zoning, AG and C-2			
9	Parcel 9:	1260	3g7 and 3g11	0.89
	Jesse B Renfro Survey			
	Situs 406 Crestview Dr			
	Zoning: AG			

7.652

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Larry Walther ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 7.764 acres of land located at 113 E. Kennedale Parkway, Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Project").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Project for a certain time period, and Optionor has agreed to do so.

NOW, THEREFORE, for the sum of \$500.00 (to be applied to earnest money due under any contract entered into by the parties) and other good and valuable consideration paid to Optionor by Optionee, the receipt and legal sufficiency of which are hereby acknowledged and agreed, Optionor and Optionee mutually covenant and agree as follows:

1. Grant of Option. Subject to the terms and conditions recited herein, Optionor hereby grants to Optionee the sole and exclusive right and option to acquire fee simple title in the Project ("Option").

2. Term of Option. Unless exercised by Optionee strictly in the manner provided herein, this Option shall automatically expire, terminate, and be of no further force or effect ~~January 1, 2019~~ February 2019 (Termination Date). However, if the Kennedale City Council approves a Letter of Support on December 11th 2018, the Option shall automatically expire, terminate, and be of no further force or effect on December 21, 2018 ("Early Termination Date").

3. Exercise of Option.

(a) The Option granted herein shall only be exercisable by the execution and delivery by Optionor and Optionee of a real estate sales contract upon terms and conditions mutually acceptable to Optionor and Optionee ("Purchase Agreement").

[Handwritten signatures and initials]
February

(b) If the Option is not exercised on or before the Termination Date or the Early Termination Date, whichever is applicable, then (i) the Option granted herein shall automatically terminate and be null and void and of no further force or effect, and (ii) the rights of Optionee under this Option Agreement shall automatically terminate, and neither party shall have any remaining obligations hereunder.

(c) Neither Optionor nor Optionee shall have any duty to enter into a Purchase Agreement prior to the Termination Date, and neither Option nor Optionee shall incur or suffer liability or monetary responsibility of any kind to the other party hereto or any other person if a Purchase Agreement is not executed on or before the Termination Date.

(d) Optionor shall have no right to enter into an agreement with another party with respect to the purchase of the Project as long as the Option Agreement is in effect.

4. Purchase Price. The purchase price for the Property shall be \$900,000.00.

5. Time of the Essence. Time is of the essence with regard to all time periods and deadlines stated in this Option Agreement.

6. Governing Law and Venue. This Option Agreement shall be construed in accordance with and the rights and remedies of the parties determined under the laws of the State of Texas. The parties agree that exclusive venue for any suit or proceeding relating to this Option Agreement, including the enforcement thereof, shall be in Tarrant County, Texas.

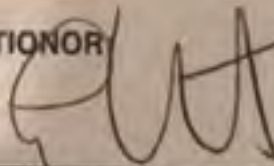
7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.

8. Amendment. This Option Agreement may only be amended by a written instrument signed by Optionor and Optionee or their respective successors and permitted assigns.

9. Counterparts. This Option Agreement may be executed in counterparts and all such counterparts shall constitute one single agreement.

Executed to be effective as of the date set forth above.

OPTIONOR



11-19-18

Larry Walther
PO Box 33346
Fort Worth, TX 76162

OPTIONEE:

OM HOUSING, LLC

By:



Deepak P. Sulakhe, President and CEO

EXHIBIT A

A Larry Walther Tract

	Parcel	Abstract	Tract	Acreage
1	Parcel 1: Jesse B Survey Renfro Address 133 E Kennedale pkwy Zoning: "C-2" general commercial district	1260	3e01	0.52
2	Parcel 2: Jesse B Renfro Survey Situs 129 E Kennedale Pkwy Zoning: split zoning, "AG" agricultural and "C-2"	1260	3e01a	1.45
3	Parcel 3: Jesse B Renfro Survey Situs 220 Kennedale Sublett Rd Zoning: Split Zoning, Ag and C-2	1260	3e01c	2.76
4	Parcel 4: Jesse B Renfro Survey 109 E Kennedale Pkwy Zoning: C-2	1260	3g01	0.03
5	Parcel 5: Jesse B Renfro Survey Situs 109 E Kennedale Pkwy Zoning: C-2	1260	3g02a	0.03
6	Parcel 6: Jesse B Renfro Survey Situs 113 E Kennedale Pkwy Zoning: C-2	1260	3g06	0.06
7	Parcel 7: Jesse B Renfro Survey Situs 111 E Kennedale Pkwy Zoning: C-2	1260	3g09	0.23

8	Parcel 8:	1260	3e1b and 3g2 - City map also shows as A1260 3e1b20	1.682
	Jesse B Renfro Survey			
	Situs 121 E Kennedale Pkwy			
	Zoning: split zoning, AG and C-2			
9	Parcel 9:	1260	3g7 and 3g11	0.89
	Jesse B Renfro Survey			
	Situs 406 Crestview Dr			
	Zoning: AG			

7.652

2.

**AGREEMENT OF SALE AND PURCHASE
(8.021 ACRES, KENNEDALE, TARRANT COUNTY, TEXAS)**

THIS AGREEMENT OF SALE AND PURCHASE (the "Agreement") is made and entered into by and between the parties listed below as "Seller" and "Purchaser", effective as of the Effective Date (defined below).

**I.
BASIC TERMS**

1.1 The following shall constitute the Basic Terms (herein so called) of this Agreement, and the terms having initial capital letters, used in the captions, or otherwise defined in the Article I shall have the same meaning when used in other Articles of this Agreement, unless the context otherwise requires a different meaning. Also, in the event of any conflict between the Basic Terms and other provisions in this Agreement, the Basic Terms shall control.

1.1.1 Seller: Mark Jason Duskocil

Attention: Jason Duskocil
4408 Barnett Blvd.
Arlington, TX 76017
(817) 229-9773
jason@dpmrealty.com

1.1.2 Purchaser: OM HOUSING, INC

Attention: Deepak Sulakhe
5033 Brookview Dr.
Dallas, TX 75220
(214) 432-7610
dsulakhe@omhousing.com

1.1.3 Land: Approximately 8.021 acres as shown on the attached Exhibit "A", KENNEDALE, TARRANT County, Texas. The legal description of the Property contained on the Survey (defined below) shall be deemed incorporated herein for all purposes as the legal description of the Property. The Property is more particularly described in Article II below and as 8.021 acres out of the J.B Renfro Survey Abstract NO. 1260 Tracts 1 and 2. Also known as 345 and 347 Kennedale Sublet Rd. Kennedale, TX



1.1.4 Purchase Price: \$606,250.00

1.1.5 Option Fees/Earnest Money: (i) initially, \$5,000.00, to be delivered to the Title Company (defined below), on or before three (3) business days after the Effective Date (defined below), and (ii) if Purchaser does not terminate this Agreement within the Review Period, an additional deposit of \$10,000.00 to the Title Company shall be made by Purchaser on or before August 5, 2019, which at Seller's option may be passed through to Seller, with standard Seller carve outs for instance for fraud and deliverability. All of such deposits shall be collectively referred to as the "Option Fees" or "Earnest Money". Except as otherwise specifically provided herein (e.g., default by Seller and casualty or condemnation), the Option Fees shall be non-refundable as of August 5, 2019, and shall be applicable to the Purchase Price.

Title Company: Stewart Title Company
Carol Erick
17304 Preston Rd, Suite 110
Dallas, TX 75252
Phone: 214.473-5414
Email: Carol.Erick@stewart.com

1.1.7 Review Period: A period of time expiring August 5, 2019 (the "Review Period").

1.1.8 Closing: On or before September 1, 2019, subject to extension as follows: Purchaser shall have the option to extend the Closing for up to one (1) period of one calendar month to October 1, 2019, by the payment of \$10,000.00, which shall be non-refundable (except upon Seller default or casualty or condemnation), and non-applicable



to the Purchase Price which at Seller's option may be passed through to Seller, with standard Seller carve outs for instance for fraud and deliverability.

1.1.9 Broker: LS Real Estate (Jason Lain), is the real estate broker for Purchaser, and the arrangement between such Broker and Purchaser is set forth in a separate written agreement. Broker shall not be entitled to any portion of the Option Fees retained by Seller under other provisions of this Agreement should the Closing not occur. Seller is not obligated to pay any brokerage commission to Broker.

1.1.10 Special Provisions:

1. Zoning: Purchaser and Seller agree to work together using respective best efforts to obtain any required rezoning and platting of this site for Purchaser's proposed use at Purchaser's expense.

2. Utilities: Purchaser and Seller agree to work together using respective best efforts to obtain any required utilities to this site for Purchaser's proposed use at Purchaser's expense.

3. Minerals. Seller reserves all minerals associated with the Property; provided, Seller and Seller's successors and assigns shall waive any and all rights to access the surface of the Property for any reason, and all extraction of minerals shall be effected at a depth of not less than 1,000 feet below the surface of the Property. The Deed (defined below) shall contain this provision.

4. Disclosures. Seller Mark Jason Daskocil is a licensed Texas real estate broker, owner of this property and owner of Daskocil Properties, LLC.

II.

DESCRIPTION OF THE PROPERTY

In consideration of the Purchase Price and upon the terms and conditions hereinafter set forth, Seller shall sell to Purchaser and Purchaser shall purchase the Property from Seller, together with all rights and appurtenances pertaining to such real estate, including, without limitation, any and all existing engineering and architectural drawings prepared for Seller, all surface rights, and all rights of Seller in and to all roads, alleys, easements, streets and ways adjacent to the Property, strips and gores and rights of ingress and egress thereto.

III.

CLOSING

3.1 The procedure to be followed by the parties in connection with each Closing shall be as follows:

3.1.1 At Closing the Seller shall cause to be delivered to the Title Company (sometimes herein referred to as the "Escrow Agent") or to Purchaser, as applicable, the items specified herein and the following documents and instruments duly executed and acknowledged, in recordable form and in form acceptable to Purchaser:

3.1.1.1 A special warranty deed (the "Deed") dated as of the Closing Date, in favor of Purchaser or its assignee;

3.1.1.2 Evidence acceptable to Title Company, authorizing the consummation by Seller of the purchase and sale transaction contemplated hereby and the execution and delivery of the closing documents on behalf of Seller, including documentation confirming the legal existence of Seller, the authority of Seller to execute and deliver such closing documents and the valid execution of such closing documents on behalf of Seller;

3.1.1.3 Possession of the Property, subject only to the Permitted Exceptions;

3.1.1.4 A certificate in such form as may be required by the Internal Revenue Service pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, or the regulations issued pursuant thereto, certifying as to the nonforeign status of a transferor, in the form required by the Internal Revenue Service ("IRS"), and in the event that Seller fails or refuses to deliver such certificate to Purchaser and the Title Company at the Closing, Seller authorizes the Purchaser or the Title Company to withhold from the cash portion of the Purchase Price as authorized by the IRS; and

3.1.1.5 All other documents and instruments reasonably required by Purchaser or the Title Company to effectuate the Closing.

3.1.2 At the Closing, Purchaser, or its assignee, shall cause to be delivered to the Title Company funds payable to the Title Company representing the cash portion of the Purchase Price, due in accordance with Article I hereof, less the Option Fees together with all accrued interest thereon, which is to be applied to the total cash payment required, and plus or minus prorations and credits provided herein.

3.1.3 At the Closing, Seller and Purchaser shall cause to be delivered to the Title Company such other instruments and documents as may be necessary and appropriate and required hereunder in order to complete the Closing of the transactions contemplated hereunder.

3.2 Upon the completion of the deliveries specified in Section 3.1 above, the Escrow Agent shall be authorized to cause the appropriate closing documents to be immediately recorded in the appropriate records of the county in which the Property is located, and shall deliver the balance of the proceeds from the sale to Seller, after deducting all expenses thereof or such other items as may be specified herein.

3.3 Seller shall furnish Purchaser with a Texas Standard Owner's Policy of Title Insurance (the "Owner's Title Policy") within a reasonable time after the Closing, in the full amount of the applicable Purchase Price, wherein the Title Company shall insure that fee simple title to the Project is vested in Purchaser, containing no exception to such title other than the Permitted Exceptions (hereinafter defined) and the standard printed

3. exceptions (provided that the area and boundaries exceptions shall be amended at Purchaser's option and expense to except only to "Shortages in Area", the exception for restrictive covenants shall be endorsed "None of Record" or shall list only those restrictive covenants as may be Permitted Exceptions, the exception for taxes shall be limited to taxes for the year in which Closing occurs and subsequent years, and subsequent assessments for prior years due to change in land usage or ownership, and endorsed "Not Yet Due and Payable"), any exception for parties in possession of the Property shall be deleted, and there shall be no exception for visible and apparent easements, roads and highways or any other matters which would be disclosed by a current survey of the Property.

3.4 Seller shall pay the cost of the Owner's Title Policy, and, except as otherwise provided herein, all other escrow and closing costs shall be allocated to and paid by Seller and Purchaser in accordance with the manner in which such costs are customarily borne by such parties in sales of similar property in the county in which the Property is located, on the date of Closing; provided, however, each party shall pay its own attorneys' fees.

IV. ITEMS FOR REVIEW; REVIEW PERIOD

4.1 Upon execution of this Agreement, Purchaser and/or Seller, as the case may be, shall perform the following within the time stated, each of which shall be a condition precedent to Closing:

4.1.1 On or before ten (10) days after the Effective Date, Purchaser, at Seller's sole cost and expense, shall obtain a Commitment for Title Insurance or a Commitment to Insure (the "Commitment") dated not earlier than the date of this Agreement, issued by the Title Company, showing Seller's title to the Property to be good and indefeasible, together with true, correct and legible copies of all items and documents referred to therein. Purchaser shall have thirty (30) days after receipt of said items (and the Survey hereinafter referred to) to examine the condition of title and approve or disapprove the same. Those items listed in the Commitment and not disapproved of by Purchaser shall be referred to as the "Permitted Exceptions." In the event that Purchaser disapproves of all or any item referred to in the Commitment, Seller shall have a period of twenty (20) days within which to cure or remove such exceptions. In the event Seller fails or refuses to cure all of such items within such twenty (20) day cure period, Purchaser shall have the right to terminate this Agreement, whereupon the Title Company is hereby authorized to, and shall, upon request of Purchaser, and the parties hereto shall be released from all obligations hereunder. In the alternative, at the written request of Purchaser, Seller shall deliver the title in its existing condition and Purchaser shall, by acceptance of such title, waive any objections to such title which have not been cured except as to warranties contained in the documents of conveyance.

4.1.2 On or before ten (10) days after the Effective Date, Seller shall deliver to Purchaser copies of the existing surveyor surveys of the Property (collectively, the "Survey"). Thereafter, Purchaser, at Purchaser's expense, shall cause to be prepared

4. and furnished to Seller an update of the Survey of the Property (the "Updated Survey"), prepared by a duly licensed land surveyor. If Purchaser shall disapprove the Updated Survey, Purchaser shall have the right to terminate this Agreement and, upon such termination, all Option Fees previously deposited shall be immediately refunded to Purchaser and the parties hereto shall have no further liability or obligations hereunder.

4.1.3 On or before ten (10) days after the Effective Date, Seller shall deliver to Purchaser the following: engineering reports, geotechnical reports, environmental reports, surveys, engineering and utility cost estimates and all other engineering, environmental, construction, utility, legal and municipal information and data in its or its consultant's possession that is pertinent to the development of the Property. Purchaser shall provide to Seller copies of all reports, studies, surveys and due diligence documents Purchaser obtains.

4.2 During the Review Period, Purchaser shall have the right to perform any and all inspections or studies of the Property which Purchaser may desire, including but not limited to a physical inspection of the Property and a feasibility study of the Property, including but not limited to review of availability of utilities, water, wastewater disposal capacity and necessity of lift station and drainage and detention aspects of the Property. If Purchaser shall find such inspections or studies to be unsatisfactory, for any reason, if Purchaser otherwise determines that the Property is not suitable for its intended use thereof, for any reason whatsoever, Purchaser shall have the right, at its option, to terminate this Agreement within the Review Period. Unless Purchaser delivers a statement to Seller and to the Title Company stating "the Property is acceptable and Purchaser intends to close" on or before the expiration of the Review Period, Purchaser shall be deemed to have rejected the condition of the Property, and this Agreement shall immediately terminate. Purchaser shall indemnify and hold Seller harmless against any claims made as a result of Purchaser's inspection of the Property, and Purchaser shall repair any damage done to the Property as a result of Purchaser's inspection of the Property.

V.

REPRESENTATIONS AND WARRANTIES OF SELLER

5.1 In addition to the representations and warranties contained in other articles of this Agreement, Seller makes the following representations and warranties which shall be true and correct as of the Closing Date and shall survive the Closing as provided below, and the truth of which shall be a condition precedent to Purchaser's obligations to close the transaction contemplated herein:

5.1.1 To the best of Seller's knowledge, Seller has received no notice (i) from any governmental authority advising Seller of its violation of a governmental ordinance, order or regulation relating to the Property, or (ii) any pending or contemplated condemnation, eminent domain, special assessments, or litigation with respect to the Property. Seller agrees to provide Purchaser with copies of any such notices it receives following the date hereof.

5.

5.1.2 At Closing, Seller will own the indefeasible title to the Property, and Seller has the full authority to enter into this Agreement. The Property is not subject to any agricultural or open space classification for property tax purposes, or if so, Seller shall be responsible for the payment of any "rollback" taxes. The person executing this Agreement on behalf of Seller is fully authorized to do so, and this Agreement constitutes the binding agreement of Seller.

VI. SURVIVAL

All warranties, representations, covenants obligations and agreements contained in this Agreement shall survive the execution and delivery of the Deed and shall survive the Closing hereof for a period of one (1) year.

VII. PRORATIONS AND ADJUSTMENTS

Ad valorem taxes on the Property for the current year shall be prorated at the Closing, effective as of such Closing utilizing the best available computations of such items. If current ad valorem tax assessments are unavailable at Closing, said ad valorem taxes shall be adjusted based on tax assessments for the immediately preceding tax year, with said tax proration to be adjusted in cash between the parties, based on actual taxes for the current year, at the time such actual taxes are determined; provided, however, all special tax assessments made by any taxing authority with respect to the Property or due to any change in use of the Property shall be the sole responsibility of Seller. The provisions of this paragraph shall survive Closing.

VIII. COMMISSIONS

8.1 Purchaser shall be responsible for the payment of any and all real estate commissions, claims for such commissions and/or similar type fees arising, directly or indirectly, out of this transaction to the Broker, and Purchaser does hereby agree to indemnify Seller against and hold Seller harmless from any and all such real estate commissions, claims for such commissions or similar fees, including attorneys' fees incurred in any lawsuit regarding such commissions or fees. In connection therewith. Purchaser does hereby represent and warrant that it, its officers, employees and agents, have contracted for no such real estate commissions, other than Broker, nor has it, without knowledge of Seller, contacted real estate agents or brokers, other than the Broker, nor has it, without Seller's knowledge, acted in a manner so as to give rise to a claim for such real estate commissions or similar fees.

8.2 By its execution hereof Purchaser acknowledges that it has been informed by real estate brokers involved with this transaction that the Purchaser should have the abstract covering the Property examined by an attorney of the Purchaser's selection or



6. that the Purchaser should be furnished with or obtain an owner's policy of title insurance covering the Property.

IX. TERMINATION AND REMEDIES

9.1 In the event that any of the Seller's representations or warranties contained herein are untrue or if Seller shall have failed to have performed any of the covenants and/or agreements contained herein which are to be performed by Seller, or if any of the conditions precedent to Purchaser's obligation to consummate the transactions contemplated hereby shall have failed to occur, Purchaser may, at its option, terminate this Agreement by giving written notice of termination to Seller or Purchaser may seek to enforce specific performance of this Agreement. It is expressly understood and agreed by Seller and Purchaser that the failure by Purchaser to terminate this Agreement for any reason pursuant to this Section 9.1 shall in no way waive, alter or modify any rights of Purchaser in regard to the representations, warranties, covenants and agreements of Seller herein.

9.2 If this Agreement is terminated by Purchaser pursuant to any provision of this Agreement authorizing such termination, Purchaser shall be entitled to the immediate refund of any and all Option Fees previously deposited, and thereafter Purchaser shall have no further obligations hereunder.

9.3 If Seller is not then in default in its obligations or agreements, and the Purchaser has not terminated this Agreement pursuant to any of the provisions authorizing such termination, and Purchaser fails to close the transaction contemplated hereby, Seller shall be entitled to receive the Option Fees as Seller's sole and exclusive remedy for such failure, Seller hereby specifically waiving any and all rights which it may have to damages, specific performance or any other remedy as a result of Purchaser's default under this Agreement.

X. RISK OF LOSS

10.1 Risk of loss until a Closing shall be borne by Seller. In the event that damage, loss or destruction of the Property or any part thereof, by fire or other casualty, or through condemnation or sale in lieu thereof, occurs prior to the actual closing of the transactions contemplated hereby, the extent of such damage or taking involving more than 10% of the Purchase Price (a "Material Event"), the Purchaser shall, at its option, elect one of the following:

10.1.1 To terminate this Agreement and receive an immediate refund of all Option Fees previously deposited.

10.1.2 To close the transactions contemplated hereby and take an assignment of and receive in cash all insurance or condemnation proceeds payable as a



7. result of such casualty loss or condemnation, and receive a credit in the amount of any deductible applicable to such insurance coverage, or, if such proceeds are not available, to receive a credit against the Purchase Price (applied first against the cash portion thereof due at Closing) in the amount of such casualty loss or condemnation proceeds together with any deductible amount applicable thereto.

10.2 In the event of less than a Material Event, Purchaser shall close the transactions contemplated hereby and take an assignment of and receive in cash all insurance or condemnation proceeds payable as a result of such casualty loss or condemnation, and receive a credit in the amount of any deductible applicable to such insurance coverage, or, if such proceeds are not available, to receive a credit against the Purchase Price (applied first against the cash portion thereof due at Closing) in the amount of such casualty loss or condemnation proceeds together with any deductible amount applicable thereto.

XI. NOTICES

11.1 Any notice, request, demand, instruction or other communication to be given to either party hereunder, except those required to be delivered at Closing, shall be in writing, and shall be deemed to be given upon receipt, if hand delivered or delivered by express delivery service, or two (2) days after deposit of such notice in registered or certified mail, return receipt requested (provided that any notice of termination shall be effective immediately upon deposit in registered or certified mail, return receipt requested), or if made by facsimile/email, it will be deemed delivered the day of transmission with fax or email receipt verification, and addressed to the parties at the address provided in Article I.

11.2 The addresses and addressees for the purpose of this article may be changed by either party by giving notice of such change to the other party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated in Article I shall be deemed to continue in effect for all purposes.

XII. MISCELLANEOUS

12.1 Entire Agreement. THIS AGREEMENT AND THE EXHIBITS ATTACHED HERETO CONTAIN THE ENTIRE AGREEMENT BETWEEN THE PARTIES, AND NO PROMISE, REPRESENTATION, WARRANTY OR COVENANT NOT INCLUDED IN THIS AGREEMENT OR ANY SUCH REFERENCED AGREEMENTS HAS BEEN OR IS RELIED UPON BY EITHER PARTY.

12.2 No Oral Modification. NO MODIFICATION OR AMENDMENT OF THIS AGREEMENT SHALL BE OF ANY FORCE OR EFFECT UNLESS MADE IN WRITING AND EXECUTED BY BOTH PURCHASER AND SELLER.



12.3 Choice of Law and Venue. In the event that any litigation arises hereunder, it is specifically stipulated that this Agreement shall be interpreted and construed according to the laws of the State of Texas, and shall be performable in TARRANT County, Texas.

12.4 Attorneys' Fees. The prevailing party in any litigation between the parties arising under this Agreement shall be entitled to recover reasonable attorney's fees.

12.5 Counterparts. This Agreement may be executed in any number of counterparts and delivered by facsimile or electronically which together shall constitute the agreement of the parties. The article headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.

12.6 Assignment. This Agreement, and the rights and obligations hereunder, may be assigned by Purchaser at any time to any entity in which Purchaser, OM Housing any affiliate of Purchaser or OM Housing is a member or partner; otherwise, the prior written consent of Seller shall be required, not to be unreasonably withheld. In the event of any such assignment, and the assignee assumes all of Purchaser's obligations under this Agreement, the original party designated as the Purchaser shall be released from all duties or obligations hereunder and the Seller agrees to close the transaction contemplated hereunder with the assignee of Purchaser.

12.7 Date of Agreement. All references in this Agreement to "the date hereof," "Effective Date", or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Agreement and the Title Company has acknowledged receipt of a fully executed counterpart of this Agreement.

12.8 Parties Bound. This Agreement and the terms and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal representatives, successors and assigns whenever the context so requires or admits.

12.9 Enforceability. If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties hereto may still effectively realize the complete benefit of the transaction contemplated hereby.

12.10 Gender; Number. Any references to one gender used herein, whether masculine, feminine or neuter, shall be deemed to be a reference to any other gender as may be appropriate under the circumstances; further, the singular shall include the plural and the plural the singular.



12.11 Term of Offer. This Agreement constitutes an offer by Purchaser to purchase the Property on the terms and conditions and for the Purchase Price specified herein. Unless sooner terminated or withdrawn by notice in writing to Seller, this offer shall lapse and terminate five (5) business days after Purchaser's delivery of this Agreement unless, prior to such time, Seller has executed and returned to Purchaser two (2) fully executed copies of this Agreement.

12.12 Day of Performance. In the event the day for which performance is scheduled hereunder is a Saturday, Sunday, or a holiday observed by national banking associations in TARRANT County, Texas, then the day for such performance shall be the immediately following business day. Any reference to a "business day" in this Agreement shall mean a day other than a Saturday, Sunday or holiday observed by national banking associations in TARRANT County, Texas.

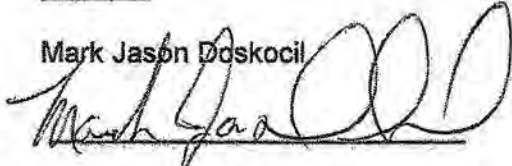
12.13 Confidentiality. This Agreement and all of the terms and provisions hereof are confidential. Purchaser and Seller agree to keep confidential (and shall use their best efforts to cause their agents, employees and the Broker to keep confidential) all discussions of this Agreement, the proposed acquisition, all documents and materials delivered pursuant to this Agreement, except for necessary disclosure to partners, employees, accountants, attorneys, lenders and consultants of the parties hereto. No public announcements concerning this Agreement or the transaction contemplated herein shall be made by either party without the mutual consent of the parties. SPECIFICALLY, SELLER SHALL KEEP THE PURCHASE PRICE AND THE TERMS OF THIS AGREEMENT STRICTLY CONFIDENTIAL.

SEPARATE SIGNATURE PAGES FOLLOW



SELLER:

Mark Jason Daskocil

A handwritten signature in black ink, appearing to read "Mark Jason Daskocil", written over a horizontal line.

Date 2-28-19

A small, stylized handwritten mark or signature in the bottom right corner of the page.

PURCHASER:
OM Housing, LLC


Deepak Sulakhe, President, CEO

Date: 



ACCEPTANCE BY TITLE COMPANY

The undersigned title company, **Stewart Title Company**, referred to in the foregoing Contract as the "Title Company", hereby acknowledges receipt of a fully executed copy (or executed counterparts) of the foregoing Contract.

By: *Carol E. Givens*
Its: S.V.P.
Date: 2/28/2019

Receipt of Earnest Money in the amount of \$10,000.00 is hereby acknowledged.

By: *Carol E. Givens*
Its: S.V.P.
Date: 3/1/2019

[Handwritten initials]

EXCLUSIVE OPTION AGREEMENT

This Exclusive Option Agreement (the "Option Agreement") is dated the 7th day of November, 2018 and entered into between Mark Jason Doskocil ("Optionor"), and OM Housing, LLC, a Texas limited liability company ("Optionee").

WHEREAS, Optionee is considering purchasing from Optionor approximately 8.021 acres located at 345 & 337 Kennedale Sublet Rd., Kennedale, Tarrant County, Texas, as more fully described on Exhibit A attached hereto ("Property").

WHEREAS, Optionee has requested Optionor to grant Optionee the sole and exclusive right to purchase the Property for a certain time period, and Optionor has agreed to do so.

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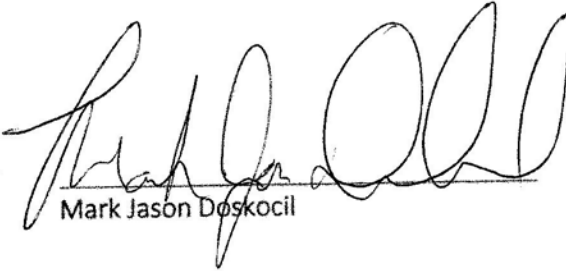
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7. Successors and Assigns. The provisions of this Option Agreement are for the benefit of and are binding upon all successors and permitted assigns of Optionor and Optionee. Optionee may assign not this Option Agreement without the prior written consent of Optionor.
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(SIGNATURE PAGE ON NEXT SHEET)

Executed to be effective as of the date set forth above.

OPTIONOR:

Mark Jason Daskocil
4408 Barnett Blvd.,
Arlington, TX 76017

By: 
Mark Jason Daskocil

OPTIONEE:

QM HOUSING, LLC

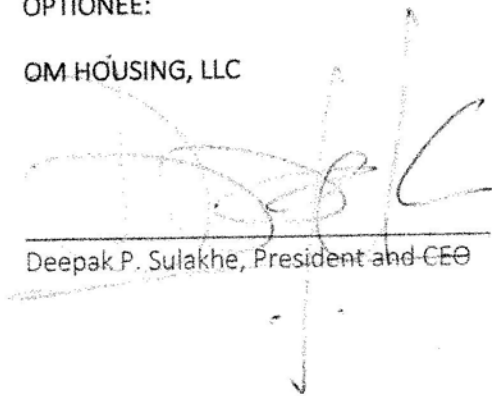
By: 
Deepak P. Sulakhe, President and CEO

EXHIBIT A

LEGAL DESCRIPTION

8.021 acres J.B. Renfro Survey Abstract NO. 1260 Tracts 1&2

EXCLUSIVE OPTION AGREEMENT

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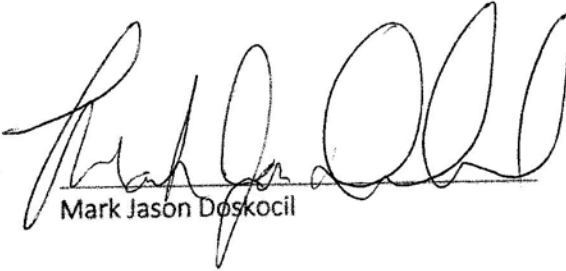
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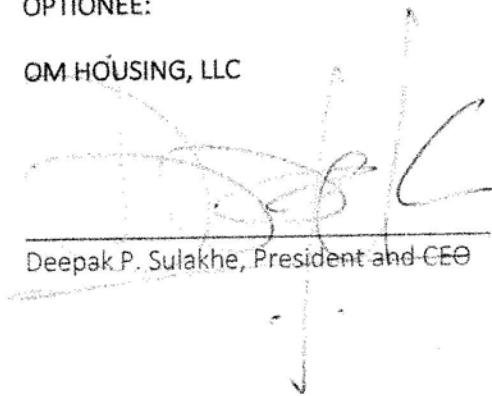
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February 20th 2019
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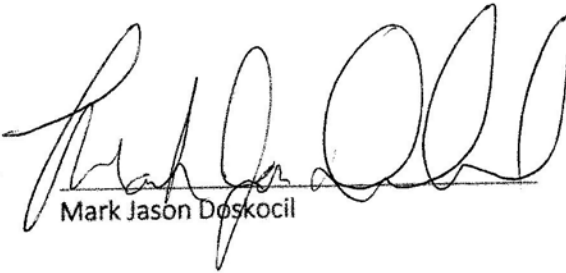
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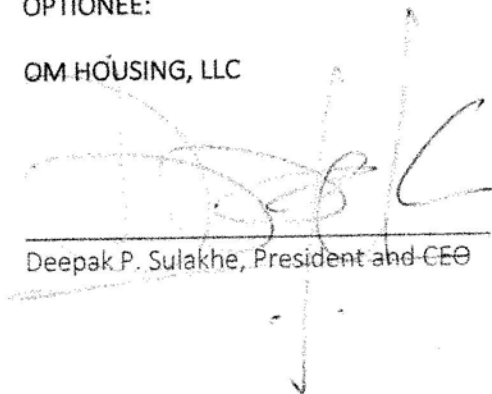
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7b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Application 18269, 2400 Bryan

RECOMMENDED ACTION

WHEREAS, an award of Competitive (9%) Housing Tax Credits in the amount of \$1,500,000 was made to Application 18269, 2400 Bryan, on July 26, 2018;

WHEREAS, the Department executed a Carryover Allocation Agreement with the Development Owner on December 11, 2018, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2020;

WHEREAS, on May 23, 2019, the Department received a request from the Development Owner to return and reallocate the tax credits under the provisions of 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events;

WHEREAS, other than in situations covered by force majeure, the Department lacks authority to extend federal deadlines for placement in service; and

WHEREAS, the Development Owner has presented evidence that relief under force majeure is appropriate;

NOW, therefore, it is hereby,

RESOLVED, the request for treatment of Application 18269, 2400 Bryan, under an application of the force majeure rule is approved; and

FURTHER RESOLVED, that except where prohibited by Federal or state law, the Applicant must continue to follow the 2018 Qualified Allocation Plan and Uniform Multifamily Rules, under which they applied, except that the 2019 Program Calendar reflected in 10 TAC §11.2 of the 2019 QAP will apply.

BACKGROUND

Application 18269, for 2400 Bryan was submitted to the Department on January 26, 2018. The Application included \$9.3 million of City of Dallas Tax Increment Financing in the Sources and Uses, and was found to be feasible with this financing included. The Application was awarded \$1.5 million of 9% Housing Tax Credits at the July 26, 2018, Board meeting. The Department subsequently executed a Carryover Allocation Agreement with the Development Owner on December 11, 2018, that included a certification from the Development Owner that each building for which the allocation was made would be placed in service by December 31, 2020. The Department does not have authority to extend the December 31, 2020 deadline, except for certain natural disasters and situations covered by force majeure.

The force majeure rule at 10 TAC §11.6(5) allows a Development Owner to return credits within three years of award, and have those credits re-allocated to the Development outside of the regional allocation process, if the requirements of the rule are met. The Department's Governing Board may approve the execution of a current program year Carryover Allocation Agreement regarding the returned credits with the Development Owner that returned such credits only if:

- (A) The credits were returned as a result of "Force Majeure" events that occurred before issuance of Forms 8609. Force Majeure events are the following sudden and unforeseen circumstances outside the control of the Development Owner: acts of God such as fire, tornado, flooding, significant and unusual rainfall or subfreezing temperatures, or loss of access to necessary water or utilities as a direct result of significant weather events; explosion; vandalism; orders or acts of military authority; unrelated party litigation; changes in law, rules, or regulations; national emergency or insurrection; riot; acts of terrorism; supplier failures; or materials or labor shortages. If a Force Majeure event is also a presidentially declared disaster, the Department may treat the matter under the applicable federal provisions. Force Majeure events must make construction activity impossible or materially impede its progress; (emphasis added)

After the Application was submitted to the Department, the City of Dallas passed a resolution adopting a new housing policy on May 9, 2018. The policy took effect immediately, with no provision for previous awards or commitments, such as the commitment submitted with the HTC Application. The City issued a Notice of Funding Availability (NOFA) required by its new policy on August 30, 2018. In meetings regarding the NOFA in September 2018, the Applicant learned that they would have to re-apply for the funds that had been previously committed to the Development. The Application for 2400 Bryan was submitted to the City on October 11, 2018.

The \$9.3 million originally committed by the City was composed of Tax Increment Financing funds, which carry very few restrictions. When the City made their award to 2400 Bryan on February 9, 2019, under the new NOFA, the Development received HOME and CDBG funds, which carry multiple federal restrictions and requirements. The Applicant claims that the new requirement to follow Davis Bacon wage and labor requirements added \$1 million to the Development budget. The environmental clearance was issued on March 25, 2019. After the environmental clearance was received, the Dallas Housing Authority was able to submit the Agreement to enter into a Housing Assistance Payment Contract to HUD on May 6, 2019. The new fund sources also required changes to the units, bedroom mix and set-asides originally presented in the Application.

In addition to delays and additional Development requirements created by the change to City of Dallas housing policy, a denial by the Texas Department of Transportation of an anticipated fire lane easement triggered changes to the architectural plans. A Material Amendment encompassing all the required changes, along with an updated feasibility conclusion in the Underwriting Report, was approved by the Board at the April 25, 2019, meeting.

The Development will have 217 units in a single 15-story building, with parking on the first 6 stories. The construction will be more complicated than a typical 3-story garden walkup design, and is further impacted by its location in downtown Dallas.

The Applicant's request for force majeure relief has been submitted at this time so they have assurance that they will be able to complete construction prior to the placed in service deadline. The confirmed construction schedule is 19 months, and while there would seem to be sufficient time to meet the December 31, 2020 deadline, any delay would put the Development's credits at risk.

Staff has reviewed the request, and believes the Applicant has met the requirements described in 10 TAC §11.6(5)(A) and (B) to be granted force majeure relief:

(B) Acts or events caused by the negligent or willful act or omission of the Development Owner, Affiliate or a Related Party shall under no circumstance be considered to be caused by Force Majeure;

(C) A Development Owner claiming Force Majeure must provide evidence of the type of event, as described in subparagraph (A) of this paragraph, when the event occurred, and that the loss was a direct result of the event;

(D) The Development Owner must prove that reasonable steps were taken to minimize or mitigate any delay or damages, that the Development Owner substantially fulfilled all obligations not impeded by the event, including timely closing of all financing and start of construction, that the Development and Development Owner was properly insured and that the Department was timely notified of the likelihood or actual occurrence of an event described in subparagraph (A) of this paragraph;

- (E) The event prevents the Development Owner from meeting the placement in service requirements of the original allocation;
- (F) The requested current year Carryover Agreement allocates the same amount of credit as that which was returned; and
- (G) The Department's Real Estate Analysis Division determines that the Development continues to be financially viable in accordance with the Department's underwriting rules after taking into account any insurance proceeds related to the event.

If the Board grants the requested treatment under application of the force majeure rule, the Development Owner will return \$1,500,000 in 2018 credits. The credits will be immediately reissued to the Development Owner with a 2019 Carryover Allocation Agreement, and a new date for the Development to be placed in service will be documented. Except as prohibited by Federal or state law, the Development will continue to be subject to the 2018 Qualified Allocation Plan and Uniform Multifamily Rules in place at the original award, except that 10 TAC §11.2, related to the Program Calendar, for 2019 will apply.



May 22, 2019

Rosalio Banuelos
Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711-3941

RE: TDHCA #18269, 2400 Bryan Street, Dallas, TX 75201 (the "Project")

Dear Rosalio and Marni:

On behalf of my client, 2400 Bryan Street, LLC (the "Owner"), I am submitting this request for return of 2018 tax credits and reallocation of the same credits pursuant to 11.6(5) of the Qualified Allocation Plan ("QAP") based on Force Majeure events that could not be foreseen by the Owner. TDHCA has been informed by the Developer of several issues that have delayed closing this transaction and commencing construction. In spite of all of that hard work, the Owner and Developer have concerns about the "placed in service" deadline of December 31, 2020. I believe that specific occurrences, since the application was filed, have resulted in a "Force Majeure" event:

1. There were "Changes in laws, rules, and regulations", in that the City of Dallas adopted a new Housing Policy after the tax credit application was filed and those changes required changes to the sources of funding and resulted in delays in closing; and pre-development;
2. There have been "sudden and unforeseen circumstances", some of which TDHCA acknowledged when granting the Material Amendment; and
3. All of the events are "out of the control of the Owner".

Following is background on each of these points:

"Changes in laws, rules and regulations"

The original application contained a resolution from the City of Dallas (the "City") along with a \$9.3M of City Tax Increment Financing (TIF) funds listed as a potential source. After this application was filed with the TDHCA on **January 26, 2018**, the City adopted a new housing policy (the "Housing Policy"). The Housing Policy was approved by the City Council on **May 9, 2018**, as shown on the Resolution and attached hereto as *Exhibit A*. Note in Section 7 of the Resolution that it took effect immediately with no provision exempting developments with prior commitments.

The Housing Policy requires that the City issue a Notice of Funding Availability ("NOFA") and that any applicant for city support and/or funding must complete a response to the NOFA and score sufficient points to be considered eligible. The NOFA was not issued until **August 30, 2018**, with pre-submission meetings held in **September, 2018**. At one of those meetings, City staff confirmed that for 2400 Bryan Street to receive City funding, the Owner would have to submit a response to the NOFA. A copy of the original NOFA, without the additional addenda, is attached as *Exhibit B*. The NOFA application was due on **October 11, 2018**. Funding was offered through a variety of programs, such as

HOME, CDBG, General Obligation Bonds, etc., but applicants were not allowed to select a preferred funding source. The awards were announced about **November 30, 2018**, and 2400 Bryan Street was one of three projects selected, but with funding from different sources than the original requested TIF funds submitted with the tax credit application.

The new City funding was approved at the **February 9, 2019**, City Council Meeting. See *Exhibit C* attached hereto. Although the Developer and Owner had been working on revised sources and uses statements based on input from City staff, the delay in getting the formal Council approval made it difficult to get timely initial commitments for construction financing, permanent financing and tax credit equity. Furthermore, with the Council Resolution, the City awarded both HOME and CDBG loans for the project which triggered Davis Bacon Wage rates, adding more than \$1 million to the construction estimate. The development team has worked judiciously to absorb this additional cost into the project budget.

Lastly, the HOME and CDBG funds also triggered the need for a HUD environmental review. The City had the review conducted in **February, 2019**, and issued its clearance letter on **March 25, 2019**. This process needed to be coordinated with the Dallas Housing Authority in order to submit application for an Agreement to Enter into a Housing Assistance Payment Contract (AHAP) to HUD, which was submitted to HUD on **May 6, 2019**.

Each of the above events taken alone may not have caused a delay. However, the City's enactment of a new Housing Policy after the TDHCA application submission deadline, while essential good public policy, was a change in laws, rules and regulations that created a cascading series of delays for the 2400 Bryan Street project.

“Sudden and unforeseen circumstances”

The City had been working for a number of years to develop a Comprehensive Housing Policy, but the Owner could not have foreseen that it would be adopted in May, 2018. This policy did not exist when the application was filed and was not foreseen to apply to this project since it had already received a City support resolution. However, in August, the Owner was informed that the City was developing a NOFA to select projects for funding and support. The Owner was also informed that if they needed City funds for this project, they would have to submit a NOFA response and score high enough to be selected for funding. Again, this could not have been foreseen when the application was filed.

In November, 2018, the City staff selected three projects for approval and funding. This project was one of the projects selected for funding. The City agreed to fund the project with a combination of HOME funds, Public-Private Partnership funds, GO Bond funds and CDBG. The City passed the resolution approving the project and the funds on February 9, 2019. At the same meeting they approved the Dallas Housing Finance Corporation's agreement to purchase the land and ground lease it to the project, as well as their participation as the Managing Member of the Owner. All of these funding changes were the result of the Housing Policy and the new NOFA process.

Because of the changes in funding, additional HUD environmental clearance was required, which had not been anticipated when the tax credit application was filed. The HOME and CDBG also triggered a Davis Bacon requirement which had not been foreseen when the original budget was created. In fact, the final HUD Authority to Use Grant Funds did not occur until May 3, 2019. A copy is attached as *Exhibit D*.

“Out of the control of the Owner”

Clearly, all of these events have been well beyond the Owner’s control of the development process. However, in each case, the Owner and Developer have reacted quickly and handled each event in a timely manner.

2400 Bryan Street is a very well designed high-rise development that will provide much needed affordable housing in a highly visible location in downtown Dallas. It is also a very complex development, with multiple layers of financing and program components on a compact urban site. With firm construction estimates and a confirmed 19 month construction schedule, the entire finance team believes a December 2020 Placed-in-Service deadline is too aggressive, given the numerous delays associated with the timing of Dallas’ new Housing Policy and other unforeseen circumstances.

We wanted to bring this issue to the attention of the TDHCA as soon as it has become apparent, so as to be able to work collaboratively toward the best solution to the problem. We believe that it is in the best interest of the project and the LIHTC program to request that TDHCA recognize the changes in rules and regulations caused by the adoption of the Dallas Housing Policy as a Force Majeure Event. As such, we hereby respectfully request that the TDHCA would accept the return of 2018 tax credits for the 2400 Bryan Street project, and immediately reissue an equal amount of 2019 credits.

The team is very committed to this project and trust that we can find a resolution to this matter, leading to the successful completion of this important housing development for the City of Dallas that will help to fulfill their housing strategies and goals for the community.

If you have any questions, or need any additional information, please call me at 972-948-3166.

Very truly yours,

The Law Offices of Claire G. Palmer, PLLC



Claire Palmer

Exhibit A

May 9, 2018

WHEREAS, the City Council passed a 5-signature memo requesting the development of a comprehensive housing policy; and

WHEREAS, on March 12, 2017, the Dallas City Council Housing Committee established three goals for the development of a comprehensive strategy for housing: (1) create and maintain available and affordable housing throughout Dallas; (2) promote greater fair housing choices; and (3) overcome patterns of segregation and concentrations of poverty through incentives and requirements; and

WHEREAS, the City of Dallas (City) engaged The Reinvestment Fund to conduct a market value analysis, a tool used to assess the residential real estate market; and

WHEREAS, based on the results of the Market Value Analysis, city staff is proposing a geographic prioritization among 3 reinvestment areas - Redevelopment Areas are Midtown, High Speed Rail, Wynnewood, and Red Bird; Stabilization Areas are LBJ Skillman, Vickery Meadow, Casa View, Forest Heights/Cornerstone Heights, East Downtown, The Bottom, West Dallas, and Red Bird North; and Emerging Markets Areas are Southern Gateway, Pleasant Grove, and University Hills; and

WHEREAS, the geographic strategies for overcoming concentrations of poverty and segregation focus on families at various income levels to provide incentives for those families that choose to move to neighborhoods with more opportunity but simultaneously helping those who wish to remain where they live to revitalize their communities with intensive city services to help connect these emerging market areas to transportation, infrastructure and other assets; and

WHEREAS, there is a housing shortage of 20,000 units in Dallas driven by land and development costs; construction costs, including labor and materials shortages; rent growth; the effects of federal, state and local regulation; as well as, the single-family rental market; and

WHEREAS, citywide production goals for homeownership and rental units for the next three years along with respective income bands that will be prioritized within the production goals (**Exhibit A**) will guide the City's efforts in reducing the housing shortage; and

WHEREAS, to be responsive to current market conditions, allocation of funds for new construction or acquisition and substantial rehabilitation of homeownership and rental units shall be conducted through the deployment of Notices of Funding Availability or Requests for Applications; and

WHEREAS, the addition of the Home Improvement and Preservation Program for both single and multi-family rental will help preserve affordable housing; and

180704

May 9, 2018

WHEREAS, the City Council desires to allow unspent funds from home repair activities (Major Systems Repairs, Emergency System Repair, and Home Rebate Improvement) to be used in the new Home Improvement and Preservation Program; and

WHEREAS, the expansion of the owner-occupied rehabilitation program activities to include refinancing of home equity lines of credit and first or reverse mortgages will also preserve affordable housing; and

WHEREAS, the Targeted Homebuyer Assistance Program, which seeks to attract school teachers, police officers, emergency medical technicians and fire fighters into Reinvestment Strategy Areas will improve safety and perception of these areas and encourage additional reinvestment; and

WHEREAS, the designation of Neighborhood Empowerment Zones (NEZ) in Stabilization Areas and the use of specific strategies and tools in the NEZs will preserve affordability or deconcentrate racially and ethnically concentrated areas of poverty (RECAP); and

WHEREAS, the establishment of a Housing Trust Fund (HTF) and dedication of certain funds to the HTF will allow the HTF to originate loans or serve as credit enhancement to support the citywide production goals and create and preserve mixed income communities; and

WHEREAS, the creation of a non-contiguous Tax Increment Financing (TIF) District for areas not already located in an existing TIF District will leverage the use of the tool to support the development of additional for-sale and rental units; and

WHEREAS, the creation of a Housing Task Force to work on legislative issues, including state and federal issues, and to review the Low-Income Housing Tax Credit Qualified Allocation Plan (QAP) will assist the City in implementing the comprehensive housing policy; and

WHEREAS, the City recognizes the importance of having a comprehensive housing policy and desires to align the existing tools and programs with newly proposed strategies, tools, and programs that will ensure consistency amongst them and a baseline for a strategic approach for implementation; and

WHEREAS, the incorporation of existing housing strategies, tools and programs into the comprehensive housing policy, including Land Bank, which is administered by the Dallas Housing and Acquisition Corporation; the sale of lots to qualified non-profits pursuant to House Bill 110; Dallas Tomorrow Fund; Dallas Homebuyer Assistance Program and the Tenant Based Rental Assistance Program, will further the goals of the comprehensive housing policy; and

WHEREAS, the Department of Housing and Neighborhood Revitalization is not the only City department responsible for implementing the comprehensive housing policy and it is the desire of the City Council that all departments support the implementation of the comprehensive housing policy by taking all necessary measures to implement the strategies, tools and programs identified in the comprehensive housing policy; and

WHEREAS, the Community Development Commission (CDC) is responsible for submitting to the city manager and city council a recommended list of priorities for the consolidated application for HUD entitlement grant funds, specific recommendations as to the use and allocation of HUD entitlement grant funds, and making recommendations concerning the creation or elimination of projects that affect the HUD entitlement grant fund budget, among other duties, and it is the desire of the City Council that the CDC support the implementation of the comprehensive housing policy by using the comprehensive housing policy as a guide for developing all recommendations, including those related to HUD entitlement grants; and

WHEREAS, it is in the best interest of the of the City of Dallas to adopt a comprehensive housing policy;

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the documents attached hereto and made a part of this Resolution entitled Comprehensive Housing Policy Manual (**Exhibit B**) are hereby adopted as the comprehensive housing policy.

SECTION 2. That existing housing strategies, tools and programs are incorporated into the comprehensive housing policy, including Land Bank, which is administered by the Dallas Housing and Acquisition Corporation; the sale of lots to qualified non-profits pursuant to the City's Land Transfer Program and House Bill 110; Dallas Tomorrow Fund; Dallas Homebuyer Assistance Program and the Tenant Based Rental Assistance Program, and that the Department of Housing and Neighborhood Revitalization, other city departments and the Land Bank (DHADC) shall use the comprehensive housing policy as a guide for administering existing strategies, tools and programs and developing new strategies, tools and programs.

SECTION 3. That the City Council must approve any addition to, alteration or deletion of a strategy, tool, or program included in the comprehensive housing policy via a resolution to amend the comprehensive housing policy, unless such addition, alteration or deletion is purely administrative in form and does not alter the stated goals and foci of the comprehensive housing policy. "Administrative changes" includes grammatical and formatting changes, adjustments that bring program terms into compliance with state and federal regulations, and increases in the maximum amount of funding assistance

allowable in programs when such increases are due to increases in land and development costs or labor and material costs, but at no such time shall the maximum funding limits exceed funding limits allowable by federal or state law.

SECTION 4. That the City will recommend that the Community Development Commission (CDC) use the comprehensive housing policy as a guide for developing all recommendations, including those related to HUD entitlement grants.

SECTION 5. That the City Manager is hereby authorized to execute individual loan agreements (and other necessary documents), in accordance with the Dallas Homebuyer Assistance Program and Home Improvement and Preservation Program, which includes loans exceeding \$50,000, without additional Council approval. Funds that support these program activities are encumbered annually pursuant to the Consolidated Plan Budget.

SECTION 6. That the new Home Improvement and Preservation Program is hereby created pursuant to Exhibit B, and that the unspent funds estimated at approximately \$4.8M from home repair activities (Major Systems Repairs, Emergency System Repair, and Home Rebate Improvement) shall be used for the Home Improvement and Preservation Program.

SECTION 7. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

SECTION 8.

1. The Dallas Housing Policy Taskforce will report to the Economic Development and Housing Committee.
2. Combine function and expertise:
 - a. Steering Committee: Made up of all chairs and co-chairs of the other committees. The Chair of each committee is an external partner with industry expertise and the co-chair is a City Staff person who will provide the internal administrative support.
 - i. Chair: Bill Hall, retired CEO Habitat, Co-Chair: Raquel Favela, Chief of Economic Development & Neighborhood Services
 - b. Development Process Committee: Works with the Department of Sustainable Development and Construction (SDC) to review the development process and zoning requirements for single-family (SF) and multi-family (MF) developments and recommends changes to the development code.
 - i. Chair: Phil Crone & Linda McMahon, Co-Chair: David Cossum

May 9, 2018

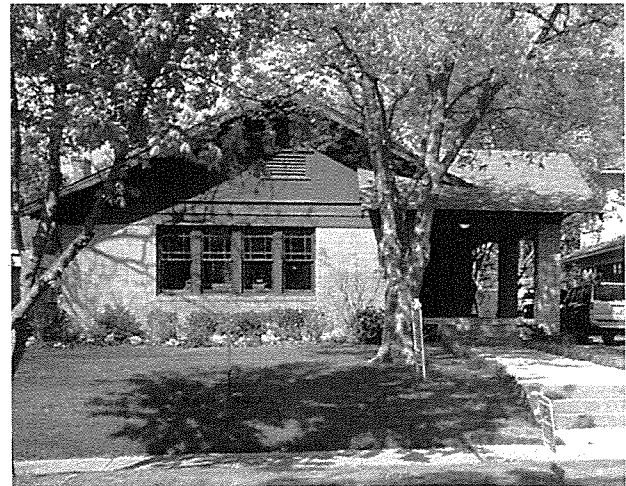
- ii. Consists of at least one SDC staff person, Department of Housing and Neighborhood Revitalization (H&NR) staff person, Planning & Urban Design (P&UD) staff person (2), Builders Association representative, Texas Real Estate Council (TREC), and all interested builders.
 - c. Infrastructure Committee: Oversees planning and installation of infrastructure components; deals with infrastructure-related issues.
 - i. Chair: Jim Knight, Co-Chair: Mike Rogers
 - ii. Consists of at least one H&NR staff person, at least one Public Works (PW) staff person, Dallas Water Utilities (DWU), utility service providers, Texas Department of Transportation (TxDOT), Dallas Area Rapid Transit (DART), etc.
 - d. Marketing and Finance Committee: Works with all housing providers to develop a one-stop resource for housing resources to provide information to buyers and renters.
 - i. Chair: Romeo Arrieta, Co-Chair: David Noguera
 - ii. Membership must include: Dallas Housing Finance Corporation (DHFC) – Board Chair or designee (1), Community Development Commission (CDC) – Board Chair or designee, Dallas Development Fund (DDF) – Board Chair (1), Community Reinvestment Act (CRA) Lenders
 - iii. Consists of at least one H&NR staff person, at least one Metrotex, Lender, and Community Development Finance Institution (CDFI) representative
 - e. Neighborhood Quality of Life Committee: Works to review all state and federal policy recommendations related to housing, including, but not limited to, tax credit Qualified Allocation Plan.
 - i. Chair: Valerie Williams, Co-Chair: Maureen Milligan
 - ii. Membership must include: Dallas Housing Authority (DHA) – Board Chair and President (2), each Certified Community Housing Development Organization (CHDO) – Respective Board Chair and CEO or designee (5), Legal Aid Groups (3)
3. Committees will meet monthly and Taskforce will meet quarterly.
4. Taskforce will report quarterly to committee, beginning in Sept 2018.
5. Meetings will be open to the public.



EXHIBIT A

Homeownership	% Total Units		HUD Area Median Income Dallas Metro	% Total Units	Rental
933	55%	Market Rate	120%	40%	587
1120			100%		587
1307	45%	Extremely Low, Very Low, Low Income	80%	60%	733
373			60%		440
			50%		293
			30%		293
Total: 3,733					Total: 2,933

EXHIBIT B



Comprehensive Housing Policy

City of Dallas
Department of Housing and Neighborhood Revitalization

Adopted by the Dallas City Council
May 9, 2018

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BACKGROUND ON DEVELOPMENT OF THE POLICY

On March 12, 2017 the Dallas City Council Housing Committee established three goals for the development of a comprehensive strategy for housing: 1) Create and maintain available and affordable housing throughout Dallas, 2) Promote greater fair housing choices, and 3) Overcome patterns of segregation and concentrations of poverty through incentives and requirements.

In August 2017 the City of Dallas engaged The Reinvestment Fund to conduct a Market Value Analysis (MVA), which is an analytical tool used to assess the residential real estate market throughout the entire city to determine with granular detail where market strength, transition and stress exists. After briefing the City Council on the results of the MVA on January 17, 2018, eight (8) public town hall meetings were held to develop the recommendations presented here. The town hall topics were:

How Residential Development Gets Financed,
How to Reduce Development and Rehabilitation Costs,
How to Increase Access to Capital and Reduce Cost of Capital, and
Programs, Tools and Strategies for Increasing Housing Production.

Each town hall provided stakeholders an opportunity to understand the housing challenges from the perspective of the major stakeholders including: lenders, including foundations and government sources of finance; consumers and neighbors; developers, builders, and contractors; and regulatory officials, such as zoning, building inspections, and code enforcement. The town halls were held both in person and through virtual telephone communications that aired on Spectrum Channel 95 and streamed online. The in-person town halls had a combined participation of ninety-four (94) individuals, many of whom also participated in the virtual town hall meetings. The virtual telephone town halls had a total of 38,690 participants for all four (4) meetings, of which 10,000 participated in more than one town hall.

The outcome of public input helped shape the ten (10) policy recommendations presented to the Economic Development and Housing Committee (Committee) on March 19, 2018 and the strategies, tools and programs included in the Comprehensive Housing Policy.

CITY OF DALLAS PLANS

forwardDallas! Comprehensive Plan

The forwardDallas! Plan is Dallas' first citywide comprehensive plan to serve as the policy basis for land development decisions in the City, through reference in the Dallas Development Code. The plan contains eight policy elements: Land Use, Economics, Housing, Transportation, Urban Design, Environment, and Neighborhoods. It provides guidance on important land development considerations related to land use, transportation and economic development. Shaped by extensive community engagement and adopted by City Council in 2006, it envisions a future Dallas built around the core values of:

- Access to good education
- A safe city
- A healthy environment
- Job growth through investment in Southern Dallas
- Convenient transportation through choices in how to get around
- Quality of life through diverse housing, recreational, cultural and educational opportunities

A key initiative of the forwardDallas! Plan was a focus on "Making Quality Housing More Accessible." The plan acknowledged that, within the regional context, Dallas has the greatest range of housing needs and problems. It recommended development of a housing strategy aimed at increasing home ownership, diversifying housing stock and providing more opportunities for affordable housing, while sustaining existing neighborhoods.

The forwardDallas! Comprehensive Plan can be found at <http://dallascityhall.com/departments/pnv/strategic-planning/Pages/comprehensive-plan.aspx>.

Neighborhood Plus Plan

Adopted in 2015, the Neighborhood Plus Plan is a citywide neighborhood revitalization plan intended to update the forwardDallas Housing and Neighborhood elements. The Neighborhood Plus plan focused on the six strategic goals of:

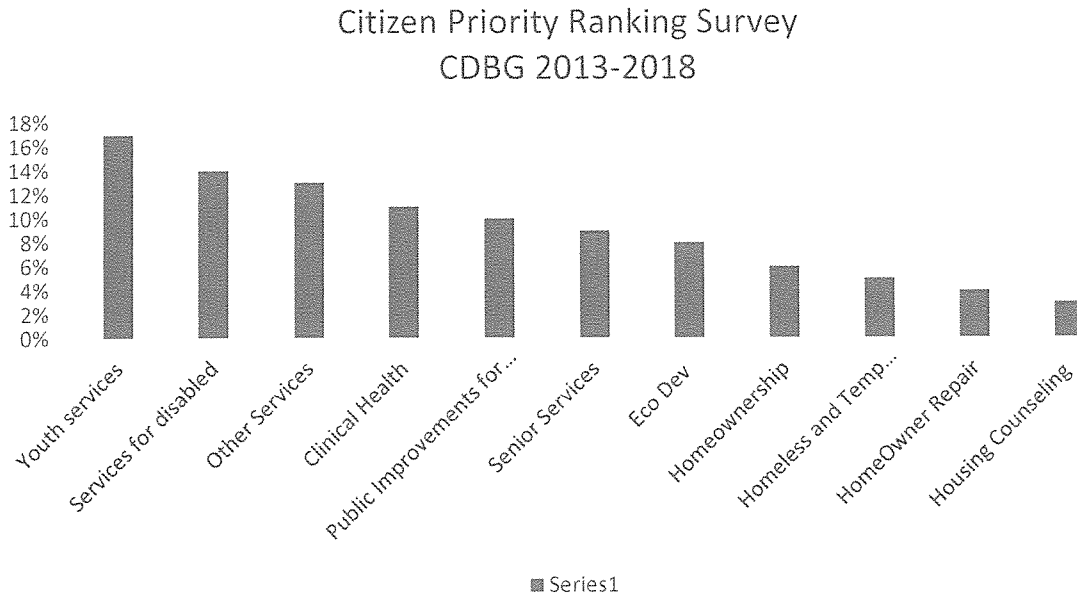
- Creating a Collective Impact Framework
- Alleviating Poverty
- Fighting Blight
- Attracting and Retaining the Middle Class
- Increasing Home Ownership
- Enhancing Rental Options.

The Neighborhood Plus recommended a holistic approach to neighborhood revitalization and community building that goes beyond production of a limited number of publicly subsidized housing units, to encompass neighborhood quality, safety, mobility and access to education, jobs and health care. The Neighborhood Plus Plan also called for a neighborhood by neighborhood approach to improving quality of life and established the basis for identifying target areas to focus neighborhood revitalization efforts.

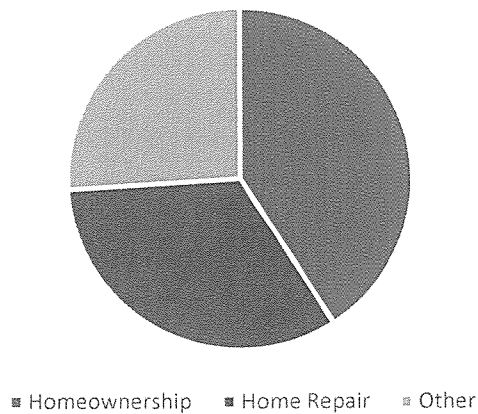
The Neighborhood Plus Plan can be found at <http://dallascityhall.com/departments/pnv/strategic-planning/DCH%20Documents/Web%20-%20Neighborhood%20Plus%20Plan%20-%20Adopted%2010-07-2015.pdf>.

Consolidated Plan Strategies

The Consolidated Plan is a five-year planning document required by HUD to carry out affordable housing and community development activities. City identified its priorities as follows:



Citizen Priority Ranking Survey
HOME 2013- 2018



REINVESTMENT STRATEGY AREAS

The Housing Policy provides for tiered Reinvestment Strategy Areas to address three (3) market types in need of City investment:

Redevelopment Areas:

A redevelopment area is characterized by a known catalytic project that has submitted a request for funding that shows preliminary viability and will begin within the next 12 months. The project as proposed must contain a housing component and must address the existing market conditions as identified in the MVA and must demonstrate a level of housing production supported through a third-party independent market analysis and show affordability to a mix of income bands.

Redevelopment Areas: Midtown, High Speed Rail, Wynnewood, and Red Bird.

Stabilization Areas:

Stabilization areas are characterized as G, H, and I markets that are surrounded by A-E markets and as such are at risk of displacement based on known market conditions including upcoming redevelopment projects. These areas are also where Incentive Zoning and Accessory Dwelling Units should be focused to allow for increased density.

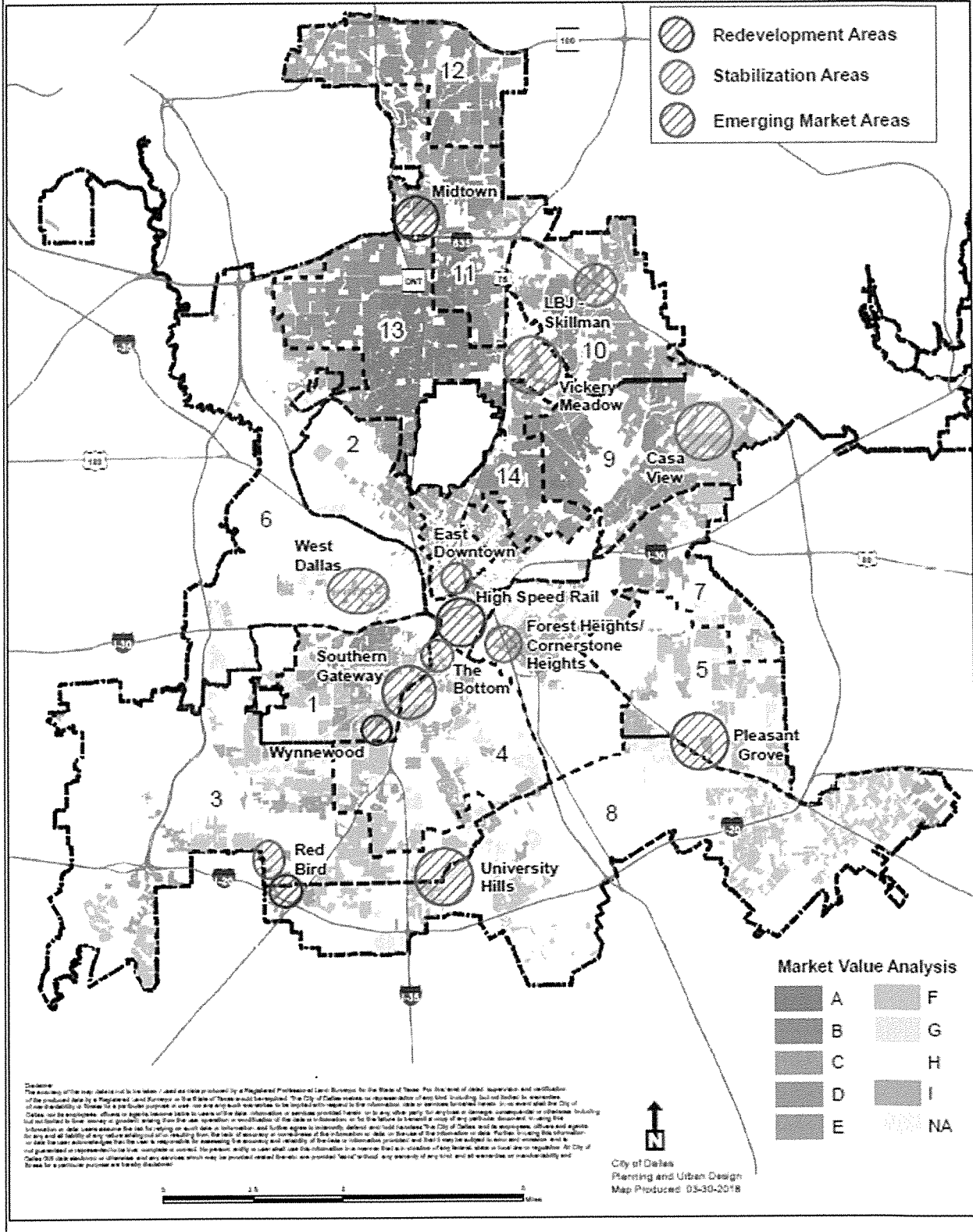
Stabilization Areas: LBJ Skillman, Vickery Meadow, Casa View, Forest Heights / Cornerstone Heights, East Downtown, The Bottom, West Dallas, and Red Bird North.

Emerging Market Areas:

These markets are characterized as areas in need of intensive environmental enhancements, master planning and formalized neighborhood organization. In order to facilitate the creation of mixed income developments, the City recommends seeking designation as Neighborhood Revitalization Strategy Areas (NRSA's) through HUD in order to prepare the area for real estate investments in a 3 to 5-year time frame and provide flexibility of use of funds without income qualifications. trust in local government and aid staff in assessing the need for strategic partnerships.

Emerging Market Areas: Southern Gateway, Pleasant Grove, and University Hills.

Reinvestment Areas



PRODUCTION GOALS AND INCOME BANDS TO BE SERVED

Dallas has a housing shortage of approximately 20,000 units. This shortage is driven by the cost of land and land development, labor and materials shortages, federal, state and local constraints, as well as, the single-family rental market which prevents equilibrium in the homeownership market. It is difficult to convert rental homes to homeownership because of the perception of the neighborhood, the condition of the housing stock once it's been in the rental market for a period of time and because income-producing property in a tight market will not be released by landlords until returns are diminished. This shortage is consistent with the overall national trend following the 2009 housing bust. While the housing market has seen a steady but slow recovery, job growth in the Dallas metro area attracted a population growth of about 2.9% that outpaced the growth in the supply of housing. Much of the single-family housing inventory converted to rental following the 2009 bust while 60% or more of the home sales in the three (3) years following were in the price range below \$249,999. In 2014 the housing market was in transition - the number home sales priced under \$249,999 decreased to less than 40% of the market and by 2017 nearly 58% of home sales were priced between \$300,000 and \$1 million. According to the Real Estate Center at Texas A&M University, while the volume of homes in Dallas only grew by 3.6%, the median sales price in Dallas grew by 9.1% in 2017.

These market conditions have led to an increase in both rental rates and sales prices in the overall market and 6 out of 10 families in Dallas are housing cost burdened, meaning they spend more than 30% of their income on housing due in part to wages not keeping pace with housing costs. Undoubtedly, families at lower income bands are more financially strained by these market conditions. Therefore, increasing production over a 3-year period and minimizing the regulatory barriers to overall market production is equally important. Furthermore, because this has made even deteriorated housing stock unaffordable, it makes the need for home repair programs more important than ever. Table 1 below shows annual production goals of 3,733 for homeownership units and 2,933 for rental units while still maintaining the 3-year historic average ratio of homeownership and rental percentages.

Beyond unit production, the City supports creating increased availability of housing for people at incomes ranging from 30% - 120% of the HUD Area Median Income, by incentivizing homeownership developments for families at 60% or higher AMI and rental developments that include rent restricted units for families at the full range of 30% - 120% of AMI. These targets area are also outlined in Table 1 below.

Table 1

Homeownership	% Total Units		HUD Area Median Income Dallas Metro	% Total Units	Rental
933	55%	Market Rate	120%	40%	587
1120			100%		587
1307	45%	Extremely Low, Very Low, Low Income	80%	60%	733
373			60%		440
			50%		293
			30%		293
Total: 3,733					Total: 2,933

HOMEOWNER PROGRAMS

Rehabilitation & Reconstruction of Owner-Occupied Homes

Provides an all-inclusive repair and rehabilitation program for single-family owner-occupied housing units. Home Improvement and Preservation Program (HIPP) will be offered as a repayment loan program to low and moderate-income homeowners, with the purpose of making needed improvements and preserving affordable housing. HIPP is designed to finance home improvements and address health, safety, accessibility modification, reconstruction and structural/deferred maintenance deficiencies. HIPP will enable homeowners to improve their housing while creating a positive effect in the community.

Eligibility

1. The property must be a single-family home.
2. The property must reside within the Dallas city limits and Applicant must have occupied the dwelling for at least six (6) months from date of application.
3. Applicant must be a U.S. Citizen or Permanent Resident, have a valid Social Security card and current Texas State issued identification card or Driver License.
4. Applicant must be current with the mortgage company meaning not more than thirty (30) days past due. (Except Accessibility Repair)
5. Property taxes must be current. Property taxes must not be delinquent for any tax year unless the homeowner has entered into a written agreement with the taxing authority outlining a payment plan for delinquent taxes and is abiding to the written agreement. (Except Accessibility Repair)
6. Applicant's annual gross income must be at or below the one hundred twenty percent (120%) of the Area Median Family Income (AMFI).
7. Standard property insurance, satisfactory to the City, must be maintained on the property (with coverage adequate to insure the City's lien position). If a property is located in a floodplain, flood insurance must also be maintained with coverage adequate to insure the City's lien position. (Except Accessibility Repair)
8. Applicant must certify that the home is not for sale and is their primary residence/homestead, as indicated per Dallas County Tax Records and utility records.
9. Title searches are obtained to evidence ownership of the property. (Except Accessibility Repair)
10. Applicants which received a Major Systems Repair loan in the last ten (10) years will be ineligible to participate.

Maximum Assistance Limits

For rehabilitation activities, the maximum amount of assistance provided shall not exceed forty-seven and half percent (47.5%) of the HUD HOME Value Limits for existing properties.

For reconstruction activities, the maximum amount of assistance provided shall not exceed seventy-five (75%) of the HUD HOME Value Limits for new construction. The Chief of Economic Development and Neighborhood Services may on a case by case basis administratively approve (without Economic Development and Housing Committee approval) additional assistance not to exceed ten percent (10%) above the maximum limit for any Owner-Occupied Rehabilitation or Reconstruction project under the following circumstances:

- To address outstanding repairs or necessary work to close out an existing project;

- The need to provide reasonable accommodations in accordance with the Americans with Disabilities Act or other local, state or federal law;
- Unanticipated costs deemed necessary to meet applicable City Codes;
- Unforeseen environmental issues; and
- Addressing issues that threaten life, health, safety and welfare of the public.

It should be noted that the Owner-Occupied Rehabilitation and Reconstruction establishes maximum per unit thresholds below the HUD required maximum per-unit dollar limitations established under HUD Section 234 Condominium Housing Limit. Thus, no individual project under this program can exceed these HOME maximum subsidy limits.

Terms of Assistance

The terms of assistance for the HIPP will be in the form of a loan based on the following schedule: 1) homeowners with incomes at or below sixty percent (60%) AMFI will receive a deferred, zero percent interest (0%) loan, 2) homeowners with sixty-one to eighty percent (61% - 80%) AMFI, will have a combination of deferred, zero percent interest (0%) loan and monthly installment payment plan as permissible through the underwriting, and 3) for homeowners with (81%-120%) AMFI, monthly installment payment with three percent interest (3%) loan will be offered.

If the home is vacated or leased during the term of the loan, then the loan shall be immediately due and payable, subject to the Resale/Recapture Requirement in Appendix 6. If the property is transferred through sale during the term of the loan, the balance shall also be immediately due and payable.

Credit Standards

Following are the credit standards for HIPP: 1) No Chapter 7 or Chapter 13 bankruptcy if primary or any mortgage is included as a secured creditor on the subject property for which the City or subrecipient will place a lien securing the loan. 2) Qualifying debt to income ratios are 30% on the front end and 43% on the back end.

Affordability Periods

Eligible rehabilitation and reconstruction activities will include all items necessary to bring the structure into compliance with the City's written rehabilitation standards and applicable local residential codes; including items recommended as necessary to preserve the property's structural integrity, historic integrity, weatherization, and quality of living conditions. The scope of work must address all major systems that have a remaining useful life for a minimum of 5 years at project completion, or the system must be rehabilitated or replaced as part of the scope of work. Major systems are identified as structural support (foundations); roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

Improvements to, or demolition of an accessory structure such as detached garage, work shed, or small residential structure will be made on a case by case basis depending on the available budget, grant requirements, current building codes, health and safety concerns, and minimum occupancy requirements of residents of the property.

Amount of Assistance	Term
Less than \$5,001	5 Years
\$5,001 to \$50,000	10 years

Over \$50,001	15 years
Reconstruction Only	20 years

Assistance to remove of any items from the property that are considered to be dangerous, hazardous, or a violation of local code are eligible in conjunction with the rehabilitation of the property.

Assistance may not be used for the purchase or repairs of appliances (except for energy efficient window units) or renovations not necessary to bring the home up to local code or property standards. Unnecessary renovations include but are not limited to luxury items (granite counter tops, swimming pools, spas, high end fixtures); tree trimming; fences; and landscaping.

Accessibility Repairs

Rehabilitation less than \$10,001 is considered a minor repair and federal funds may be used to perform strictly accessibility modifications. Assistance in the form of a one-time grant not to exceed \$10,000 shall exclude environmental and administrative soft costs necessary to engage the client and property.

Mortgage and Refinancing

Assistance may be provided to an Applicant who has an existing mortgage or equity loan if the total debt, including mortgage/equity loan balance and all rehabilitation costs do not exceed 100% of the after-rehabilitation value of the property. The City deferred loan may be subordinate to the existing mortgage or equity loan.

Refinancing of an existing mortgage, equity loan, or liens from lot clearance/demolition is an eligible refinancing expense up to \$10,000. The total debt, including refinanced amount and rehabilitation costs, cannot exceed 100% of the after-rehabilitation value of the property. Refinancing of revolving loan accounts, vehicles, credit card debt, or property taxes are NOT allowable refinancing expenses.

Heirs

A loan may be transferred to the heir(s) of the borrower if the heir(s) are income qualified and utilize the assisted property as their primary residence whether the loan is still within the period of affordability or not. If the heir(s) do not meet the income requirements of the program, the remaining balance of the loan is due immediately and payable in full if the loan is still within the period of affordability. If the property is not within the period of affordability and the heir(s) are not income qualified or do not utilize the property as their primary residence, the City or Sub-recipient may make payment arrangements with the heir(s) at an interest rate between zero (0) and three percent (3%).

Dallas Homebuyer Assistance Program

Provides homeownership opportunities to low and moderate income homebuyers through the provision of financial assistance when purchasing a home, in accordance with federal, state and local laws and regulations.

Eligibility

Applicants to homebuyer programs must meet the following criteria:

1. Property must be located in the city limits of Dallas.
2. Applicant's projected annual income must be no less than 40% of Area Median Income, but not exceed 120% of the Area Median Income, adjusted for household size, at the time of application to the program.
3. Applicant must have acceptable credit. High cost or sub-prime loans, adjustable rate mortgages, interest only loans are not allowed.
4. Applicant household must be U.S Citizens or legal residents and possess a valid social security card.
5. Property to be purchased must be primary residence of Applicant.
6. Applicant must attend an 8-hour homeownership education class from a HUD certified counseling agency within 12 months of application for assistance.
7. Applicant must make a minimum initial cash investment of \$1,000 toward purchase of home.
8. Home must meet federal and local requirements, including Minimum Housing Standards, Environmental Review, and international residential code.

Eligible Properties

The property can be privately or publicly owned prior to sale to the Applicant. The property must be within the Dallas city limits and meet City building codes, lead based paint requirements, and environmental standards at the time of initial occupancy.

The property must contain adequate living and sleeping space for the applicant household as verified by the property appraisal, site visit, and/or Dallas Appraisal District Data. The property can be an existing property, or it may be newly constructed. The property can be:

- Single-family property (one unit)
- Two to four unit property (Assistance provided for the unit to be occupied as the purchaser's principal residence); or
- Condominium or cooperative unit

All Homebuyer Programs require an appraisal and can be provided by the first mortgage lender. The appraisal value of an assisted property to be acquired for this activity cannot exceed the HOME Value Limit for Dallas. This limit is updated annually. The sale price of an assisted property may not exceed the "Appraised Value".

Affordability Periods

The residence must remain affordable for a certain period of time, which is dependent on the amount of funds invested. The City's recapture provisions will apply.

Amount of Funds	Required Affordability
Less than \$15,000	5 Years
\$15,000 to \$40,000	10 Years
Over \$40,000	15 Years

HOME Program Recapture/Resale Requirements
These requirements can be found in Appendix 6.

Eligible Expenses

Homebuyer Programs may include any of the following activities: principle reduction, down payment and closing cost assistance. If the house is sold before the required affordability period has elapsed, the assistance funds must be recaptured.

Terms of Assistance

The assistance for the Dallas Homebuyer Assistance Program will be offered in the form of a deferred, zero percent interest (0%) loan. If the home is vacated or leased during the term of the loan, then the full loan shall be immediately due and payable in accordance with the Resale/Recapture Requirements in Appendix 6. If the property is transferred through sale during the term of the loan, the balance shall also be immediately due and payable.

Credit Standards

Following are the credit standards for homebuyer programs:

- No Chapter 7 or Chapter 13 bankruptcy if primary or any mortgage is included as a secured creditor on the subject property for which the City or subrecipient will place a lien securing the loan.
- Qualifying debt to income ratios are 30% on the front end and 43% on the back end. With compensating factors, the City will allow 33% on the front end and 45% on the back end.
- Maximum loan is up to the 1st lien holder's approval of Complete Loan to Value (CLTV).
- Predatory lending describes lending practices that take advantage of clients by charging usurious interest rates or excessive fees and penalties. Loans will not be made with an interest rate more than 2% above the prevailing market rate.

Heirs

A loan may be transferred to the heir(s) of the borrower if the heir(s) are income qualified and utilize the assisted property as their primary residence whether the loan is still within the period of affordability or not. If the heir(s) do not meet the income requirements of the program, the remaining balance of the loan is due immediately and payable in full if the loan is still within the period of affordability. If the property is not within the period of affordability and the heir(s) are not income qualified or do not utilize the property as their primary residence, the City or Sub-recipient may make payment arrangements with the heir(s) at an interest rate between zero (0) and three percent (3%).

Refinancing

Refinancing for better rate and term is permitted. Refinancing of revolving loan accounts, vehicles, credit card debt, or property taxes are NOT allowable refinancing expenses. Cash out are also NOT allowed.

Homebuyer Incentive Program

This program offers financial assistance for school teachers, police officers, emergency medical technicians, and fire fighters which purchase a property within one of the targeted areas. By purchasing a home in one of the target areas, then repayment of the loan shall be due only upon re-sale or transfer, and contingent upon maintaining owner occupancy for a 10-year period.

LANDLORD PROGRAMS

Rental Rehabilitation and Reconstruction

Provides an all-inclusive repair and rehabilitation program for single-family (1-4) rental units. The Home Improvement and Preservation Program (HIPP) expands to offer a repayment loan program to landlords which lease to low income household, with the purpose of making needed improvements and preserving affordable housing. HIPP is designed to finance home improvements and address health, safety, accessibility modifications, reconstruction and structural/deferred maintenance deficiencies.

Eligibility

- The property must be a single-family home (1-4 units). Properties with over 5 units are not eligible for rehabilitation assistance under this program.
- The property must reside within the city limits of Dallas.
- Applicant must lease the unit to a household with an annual gross income at or below the eighty percent (80%) of the Area Median Family Income (AMFI).
- Applicant must provide evidence of property ownership. Additionally, City shall require a title search to verify whether liens or deed restrictions exist.
- Applicant and tenants must be a U.S. Citizen or Permanent Resident, have a valid Social Security card, and current Texas State issued identification card or Driver License.
- Applicant must be current with the mortgage company meaning not more than 30 days past due.
- Property taxes must be current. Property taxes must not be delinquent for any tax year.
- Tenant household's annual gross income must be at or below the 80% of the Area Median Income.
- Standard property insurance, satisfactory to the City, must be maintained on the property (with coverage adequate to insure the City's lien position). If a property is located in a flood plain, flood insurance must also be maintained with coverage adequate to insure the City's lien position.
- Applicant must adhere to the City Code Section 20-A and comply with HUD rent limits.

Maximum Assistance Limits

For rehabilitation activities, the maximum amount of assistance provided shall not exceed 47.5% of the HUD HOME Value Limits for existing properties.

For reconstruction activities, the maximum amount of assistance provided shall not exceed 75% of the HUD HOME Value Limits for new construction. The Chief of Economic and Neighborhood Services may on a case by case basis administratively approve (without Housing Committee approval) additional assistance not to exceed 10% above the maximum limit for any Rental Rehabilitation or Reconstruction project under the following circumstances:

- To address outstanding repairs or necessary work to close out an existing project.
- The need to provide reasonable accommodations in accordance with the Americans with Disabilities Act or other local, state or federal law;
- Unanticipated costs deemed necessary to meet applicable City Codes;
- Unforeseen environmental issues; and
- Addressing issues that threaten life, health, safety and welfare of the public.

It should be noted that the Rental Rehabilitation and Reconstruction establishes maximum per unit thresholds below the HUD required maximum per-unit dollar limitations established under HUD Section 234 Condominium Housing Limit. Thus, no individual project under this program can exceed these HOME maximum subsidy limits.

Terms of Assistance

The terms of assistance to Applicants of Rental Repair and Rehabilitation will be in the form of a three percent (3%) interest rate loan. If the landlord does not comply with the requirements set out in this program, including but not limited, leasing to a household over eighty percent (80%) AMFI, then the full loan shall be immediately due and payable in full. If the property is transferred through sale during the term of the loan, the balance shall also be immediately due and payable in full.

Credit Standards

Following are the credit standards for HIPP:

- No Chapter 7 or Chapter 13 bankruptcy if primary or any mortgage is included as a secured creditor on the subject property for which the City or subrecipient will place a lien securing the loan.

Eligible Rehabilitation and Reconstruction Scope

Eligible rehabilitation and reconstruction activities will include all items necessary to bring the structure into compliance with the City's written rehabilitation standards and applicable local residential codes; including items recommended as necessary to preserve the property's structural integrity, historic integrity, weatherization, and quality of living conditions. The scope of work must address all major systems that have a remaining useful life for a minimum of 5 years at project completion, or the system must be rehabilitated or replaced as part of the scope of work. Major systems are identified as structural support (foundation); roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

Improvements to or demolition of an accessory structure such as detached garage, work shed, or small residential structure will be made on a case by case basis depending on the available budget, grant requirements, current building codes, health and safety concerns, and minimum occupancy requirements of residents of the property.

Amount of Assistance	Term
Less than \$5,001	5 Years
\$5,001 to \$50,000	10 years
Over \$50,001	15 years
Reconstruction Only	20 years

Assistance to remove of any items from the property that are considered to be dangerous, hazardous, or a violation of local code are eligible in conjunction with the rehabilitation of the property.

Assistance may not be used for the purchase or repairs of appliances (except for energy efficient window units) or renovations not necessary to bring the home up to local code or property

standards. Unnecessary renovations include but are not limited to luxury items (granite counter tops, swimming pools, spas, high end fixtures); tree trimming; fences; and landscaping.

Refinancing

Refinancing of an existing mortgage, equity loan, or liens from lot clearance/demolition is an eligible refinancing expense up to \$10,000. The total debt, including refinanced amount and rehabilitation costs, cannot exceed 100% of the after-rehabilitation value of the property. Refinancing of revolving loan accounts, vehicles, credit card debt, or property taxes are NOT allowable refinancing expenses. Cash out is also not permissible.

TENANT PROGRAMS

Tenant Based Rental Assistance

The purpose of this program is to provide supplemental financial assistance to displaced tenants as a result of the High Impact Landlord Initiative (HILI) to pay the difference between the cost of rent and the actual affordable amount that the tenant can pay. The program shall be operated on a first come first serve basis. Only HOME funds can be used to fund Tenant Based Rental Assistance (TBRA) programs. This is not an eligible activity under the Community Development Block Grant (CDBG) Program.

Eligible Uses

Eligible costs include: Subsidy is based on the amount of the rent, household income and City rent standard in a form of a grant. Covered expenses include:

- Rent supplemental financial assistance:
- Utility costs
- Security deposits
- Utility deposits
- Maximum assistance of 24 months
- May provide security deposit and utility deposit assistance upon exiting the program for a permanent unit

No payments will be made directly to the tenant household.

Prohibited Uses

City of Dallas HOME TBRA funds may not be used to assist tenants in conjunction with homebuyer programs, including lease purchase programs.

Eligible Units

Eligible tenants may rent any housing that meets the following criteria:

- Located in Dallas City Limits
- Meets Minimum Housing Quality Standards
- Reasonable rents are charged
- Are not public housing projects, or receiving project based federal assistance

Subsidy Amounts and Tenant Contribution

Maximum Subsidy: Maximum assistance that can be provided is the difference between 30% of the household's adjusted monthly income and the payment standard.

Minimum Tenant Contribution: All tenants are required to pay 30% of their monthly adjusted income, or \$20.00 per month, whichever is greater.

Length of Assistance: Assistance will not be provided for a period of time longer than two years, and minimum of one-year lease.

Other Tenant Requirements

Agencies administering TBRA programs may require tenant participation in a self-sufficiency program as a condition of rental assistance.

A legitimate, legal lease is required for program participants.

Income Recertification

Income of tenants receiving HOME tenant based rental assistance must be re-certified on an annual basis, at a minimum. City staff may require recertification of tenant income at any time, at the City's discretion, if it appears that a tenant's income has changed substantially during the contract term. If the tenant's income exceeds eighty percent (80%) of Area Median Family Income, HOME assistance must be terminated.

Payment Standard

The HOME payment standard will be the Small Area Market Rent, annually established and published by the US Department of Housing and Urban Development.

Termination of Assistance

HOME assistance may be terminated if the following occurs:

- Household's income exceeds eighty percent (80%) of Area Median Income;
- Household is evicted from the approved unit by owner for cause;
- After receipt of two official notices requesting cooperation in the re-certification process, the household is unresponsive and uncooperative.

In all cases above, thirty days' notice of the termination must be provided to the tenant and landlord.

DEVELOPER PROGRAMS

New Construction and Substantial Rehabilitation Program

The purpose of this program is to provide financial assistance to new developments or substantial rehabilitation developments, where such assistance is necessary, and appropriately incentivize private investment for the development of quality, sustainable housing that is affordable to the residents of the City.

Funds may be used for projects to: 1) build new single-family with 5 or more homes, 2) build new multi-family rental housing with 5 or more units, or 3) substantially rehabilitate multi-family rental housing greater than 5 units. The City shall award, when funds are available, through a competitive Notice of Funding Availability (NOFA) or Request for Applications (RFA) process in accordance with the program's scoring policy.

Eligibility

To be eligible for funding under the New Construction and Substantial Rehabilitation Program assistance the proposed project must meet all of the following basic criteria:

- Project must consist of 5 or more units located within the municipal boundaries of the City of Dallas. Note: Extra Territorial Jurisdictions areas are not eligible for financial assistance.
- Substantial rehabilitation projects must, at a minimum, meet the substantial rehabilitation test

In addition to fully meeting the City's minimum code requirements, a project must meet one or more of the following Substantial Rehabilitation threshold tests:

- Replacement of two or more major building components (roof; wall or floor structures; foundations; plumbing, central HVAC or electrical system); or
- costs are 15% or more, exclusive of any acquisition and/or acquisition and development soft costs, of the property's replacement cost (fair market value) after completion of all required repairs, replacements and improvements; or
- rehabilitation hard costs are \$10,000 or more per unit.

The after-rehabilitation rents required to effectively support the property, including the additional rehabilitation project debt service, must be:

- Reasonable, and fall within the underwriting standards; and
- Affordable and meet the City's definition of affordability.

Owners must exhibit a cash equity participation of at least 10% in the rental property proposed for rehabilitation. Note: Housing tax credits proceeds are to be treated as equity.

Loan Terms

Financial assistance can be provided in the form of a repayable loan with scheduled payments or, if the project involves housing tax credits, a surplus cash loan. The City loan is fully repayable, and the interest rate varies by the type of Borrower. The interest rate for a qualified CHDO Borrower or Sponsor shall be zero percent (0%) simple annual interest. The interest rate for a qualified nonprofit Borrower or Sponsors shall be one percent (1%) simple annual interest. The base interest rate for all other Borrowers shall be three percent (3%). However, the 3% base rate can be reduced through a combination of one or more Borrower concessions:

- A Borrower guarantee to make annual interest payments will reduce base interest rate by 1%;
- Borrower agreement to limit loan maturity to 20 years or less reduces base interest rate by 1%;
- or
- Borrower guarantee of annual interest and principal payments reduces base interest rate by 2%.

The Borrower can combine a) and b) above to reduce the 3% annual simple interest base interest rate by 2% to the 1% annual simple interest floor rate. However, in no instance can the floor interest rate be less than 1% annual simple interest for a Borrower in this category.

Repayment of loan principal and interest should be either:

- Equal monthly installments over a period of up to 300 months if the project does not involve housing tax credits. Subject to City review and approval, multi-family projects may have up to 24 months (in addition to the above stated maturity of 300 months) of deferred principal and interest during a construction and lease-up; or,
- An annual surplus cash payment, when the project involves housing tax credits. The City's surplus cash loans funding will be structured with note provisions requiring that at least 50% of Eligible Cash in excess of \$50,000 be paid annually to subordinate lenders (including funding partners and related parties) on a prorated basis.

Eligible Cash shall be defined as: Surplus cash available for partnership distribution, less any outstanding:

- Credit adjusters
- Asset management fees
- Operating reserve account replenishment
- Limited partner loans that have been approved by the City
- Deferred developer fees
- Supplemental replacement reserve deposits approved by the City

Note: Incentive management fees have been deliberately omitted from the above list. Payment of incentive management fees shall be subordinate to repayment of the City's loan(s).

Additional Requirements for New Construction Development

For new construction housing developments funded by the City, the maximum subsidy per unit is 22.5% of the HUD HOME Value Limit.

Funding will be provided to Community Housing Development Organizations, governmental entities, or public facility corporations at 0% simple interest, which will be forgiven upon sale of the property to home buyer.

In addition, funding will be provided to other qualified non-profit organizations at 1% simple interest, which will be forgiven upon sale of the property to home buyer.

Projects shall submit, on an annual basis, either HUD Form 93489 (HUD Computation of Surplus Cash), or the City's form, with the project audit. The City will invoice the project, allowing for repayment to occur up to the end of the current calendar year when HUD financing is involved. Otherwise, the surplus cash payment will be due within 45 days of the invoice postmark. Late payments will be assessed a 5%

late charge. The loan will be in default if payments are more than 75 days late. The default interest rate shall be 500 basis points (5%) over the note interest rate.

The City multi-family rental loan is limited to only the amount necessary to fully fund the required rehabilitation work, not to exceed nine percent (9%) of the annual HUD Section 234 – Condominium Housing Limits in Dallas, Texas for elevator units (by number of bedrooms per unit). In 2018, the annual limits were as follows:

Efficiency - \$58,787
 1 Bedroom - \$67,391
 2 Bedroom - \$81,947
 3 Bedroom - \$106,013
 4 Bedroom - \$116,369

Note: The above table is only valid for 2018 and is otherwise provided for illustrative purposes. Contact the City's Housing Department for a schedule of current HUD 234 Limits.

Affordability Period Requirements for All Rental Housing Development and Substantial Rehabilitation Loans

The Period of Affordability (income and rent restrictions) applies to both single-family and multi-family rental housing projects. Affordability periods shall be set as follows, in keeping with HUD requirements.

Amount of CDBG or HOME funds Per Unit	Minimum Period of Affordability
Under \$15,000/ Unit	Five (5) years
\$15,000 - \$40,000/ Unit	Ten (10) years
Over \$40,000 or rehabilitation involving refinancing	Fifteen (15) years
New construction of Rental Housing	Twenty (20) years

Conditions of All City Loans

- The property must be residential rental property under the existing ownership for the entire loan term. If the property is transferred by any means during the loan term, the remaining unforgiving portion, plus interest based on the existing market, will become immediately due and payable;
- The Borrower must maintain the property according to the Dallas Unified Building Code and agrees to allow City personnel to annually inspect the property;
- The Borrower provides evidence of having paid annual property taxes and having secured fire and extended insurance coverage for the property;
- Borrower must annually provide the City of Dallas with the information on rents and occupancy of HOME-assisted units to demonstrate compliance with the affordability rent requirements;
- The Borrower must maintain reserves for maintenance; and
- No further assistance during the affordability period term of the loan, whichever is longer.

The City loan will be secured by a lien on the property. The lien position will be no less than a second, except upon approval of the appropriate City Department Director, subordinate only to a private financial institution's superior lien for a loan in a greater amount. The City may also require additional security for its loan, including, but not limited to, a first lien position on other investment property of the owner, as well as personal and/or corporate guarantees if it is necessary to secure the loan.

The terms of payment will continue throughout the entire term of the note, provided the Borrower complies with each and every term and condition of the loan documents. If the Borrower does not comply, or if the borrower at any time defaults under the terms of the note, interest on the unpaid principal will thereafter:

- accrue at a rate that is 500 basis points over the Note interest rate, and
- be immediately payable in addition to the entire outstanding principal amount

Financial Structuring

GAP Financing

The City deferred debt (deferred forgivable or surplus cash) only be used for and based upon the financing gap on affordable units. The City loan cannot exceed the financing gap.

Balloon Mortgages

Ballooning senior debt mortgages may require additional mitigating factors depending on overall project sources and uses, projected loan-to-value, and other risk factors. Under no circumstances will the City participate in a transaction where a senior balloon term is less than 15 years.

Surplus Cash Mortgages

The City's surplus cash loans funding will be structured with note provisions requiring that at least 50% of Eligible Cash in excess of \$50,000 be paid annually to subordinate lenders (including funding partners and related parties) on a prorated basis.

Eligible Cash shall be defined as:

- Surplus cash available for partnership distribution, less
- Any outstanding:
 - Credit adjusters
 - Asset management fees
 - Operating reserve account replenishment
 - Approved limited partner loans
 - Deferred developer fees
 - Approved supplemental replacement reserve deposits

Projects shall submit, on an annual basis, either HUD Form 93489 (HUD Computation of Surplus Cash), or the City's form, with the project audit. The City will invoice the project, allowing for repayment to occur up to the end of the current calendar year when HUD financing is involved and general HUD distribution guidelines. Otherwise, the surplus cash payment will be due within 45 days of the invoice postmark. Late payments will be assessed a 5% late charge. The loan will be in default if payments are more than 75 days late. The default interest rate shall be 500 basis points (5%) over the note interest rate.

Appraisal Requirements

Projects Receiving City First Mortgage Acquisition Financing

Prior to funding commitment, the borrower must provide a completed Appraisal Request Form for City-Ordered Appraisals by the date specified in the City's notice of funding award, unless the development is exempt from the appraisal requirement as described below. The establishment of the date will take into account the applicable funding source commitment deadline and the Borrower's project timeline.

Developments exempt from the prior to commitment appraisal requirement:

- Acquisition price under \$100,000
- Land only where there is no identity of interest. Identity of interest is used broadly to include non-arm's length transactions, related-party transactions, etc.
- Single family homes (1-4 family structures) that are aggregated under one loan
- The Borrower has provided a Market Study
- The Project is HUD 202 or HUD 811 with a funding reservation

Note: Whenever a project is exempt under one of the above provisions, the City will use assessed value unless the borrower requests an appraisal for determining acquisition cost as defined in these Underwriting Standards.

The cost of appraisals must be borne by the Borrower. All costs incurred for the appraisal, and any revisions, will be the responsibility of the applicant. The City will collect the appraisal costs from its loan proceeds at closing.

Appraisals ordered by the Borrower will not be accepted. All appraisals must be ordered by the City, HUD or a designated HUD MAP lender, Fannie Mae or a designated Fannie Mae Delegated Underwriter Services (DUS) lender or a regulated financial institution.

An Agency ordered appraisal will be used to support the acquisition costs identified at the time of application. The appraised value will be used by the City and its funding partners in underwriting the acquisition cost.

An As-Is Appraisal:

Land Only for New Construction: Fee simple value of the land. The market value appraisal will consider the real property's zoning as of the effective date of the appraiser's opinion of value. If the real property consists of more than one parcel, the parcels will be combined in one appraisal with one value conclusion.

Acquisition/Rehab:

Fee simple "as-is" value of the existing multi-family property assuming market rate rents. Fee simple, in "as-is" condition, with existing restricted rate rents.

Adaptive Re-Use:

Fee simple market value of the property to be adapted for an alternate use. The valuation will assume the highest and best use permitted by law and economically feasible in the current market.

Prior to Closing – Scheduled Payment Loans:

For scheduled payment loans, an as-completed appraisal is required to establish loan to value. An "as-completed and stabilized" appraisal is required for all amortizing loans. Two hypothetical values are required:

- As completed and stabilized, subject to restricted rents
- As completed and stabilized, assuming market rate rents

The lesser of the two values will be used to determine loan to value for the City's underwriting. The City will finance no more than 87% of appraised value (85% for loans with \$15,000 per unit or less in rehabilitation). Plans and specifications must be sufficiently complete for the appraiser

to establish the “as completed” value. The appraisal must be conducted no more than six months prior to closing or end loan commitment (or the borrower will be required to pay for an appraisal update).

Prior to Closing- Deferred Loans:

For non-amortizing loans, the City requires an appraisal prior to closing similar to that required for amortizing loans (above). Borrowers may use another lender’s appraisal. Non- Amortizing developments exempt from the prior to closing appraisal requirement include:

- Single family homes (1-4 family) that are aggregated under one loan (the City will use assessed value unless the Borrower requests an appraisal for determining acquisition cost as defined in the Borrower’s Underwriting Standards.)

Loan Conditions

As a condition of the City Loan, the Developer must agree:

- To rent these properties in accordance with Affirmative marking standards and the current HUD Section 8 rental income guidelines for the Period of Affordability and the federal equal housing opportunity requirements in the Fair Housing Act.
- Not discriminate on basis or race, religion or national origin.
- Not discriminate against lower income prospective tenants, solely on the basis of their receipt of Section 8 Housing assistance support.
- Not convert the property to condominiums for the duration of the public note.
- To maintain the property in a safe, sanitary and decent condition, in compliance with the City of Dallas Building Codes throughout the term of the public sector note.
- To provide evidence of having paid annual property taxes and secured fire and extended insurance coverage for the property.
- Comply with Annual Re-certification of tenant’s annual income, which means each year the property owner must document the income of the tenant by reviewing documents such as W-2’s, pay stubs, etc. in order to ensure that their income meets the low-income requirements.
- To a property inspection one (1) year after the rehabilitation and every two (2) years thereafter during the period of affordability. The owner must agree to cooperate with and assist in this inspection effort, and to resolve all deficiencies cited within the designated correction period allotted.
- To pay real property taxes and maintain adequate fire and extended coverage insurance with City named as co-insured on the subject property for the full term of the loan. The City will require owner to provide documentation of tax payment and insurance coverage on an annual basis.
- To adhere to Lead-Based Paint Abatement guidelines for all properties built 1978 and before.

The City will examine the sources and uses for each project and determine whether the costs are eligible and reasonable, the return to the developer is appropriate (not excessive); and the other sources of funds needed for the project are firm commitments. “Reasonableness” of development costs should be based on the following factors:

- Costs of comparable projects in the same geographical area;
- Qualifications of the cost estimators for the various budget line items; and
- Comparable costs published by recognized industry cost index services

Failure to comply with any of the conditions outlined above will constitute a default of the public sector loan, requiring the balance to become immediately due and payable.

During the term of the public sector loan, if the property is sold, or ownership transferred through any means, then the balance of the note then owing, including the remaining deferred forgivable portion is immediately due and payable in full.

For HOME projects, a determination of fixed or floating HOME units must be made at the time of Loan commitment. Fixed units must remain the same throughout the period of affordability. Floating units may change in order to maintain conformity so that the total number of units meet the required number of bedrooms to the originally designated HOME-assisted unit.

Loan Closing

The property owner will be required to provide the following items for loan closing:

- For substantial rehabilitation projects, the after-rehabilitation appraisal of the property showing the appropriate value relative to the proposed loan.
- Acceptable Commitment for Title Insurance Policy showing the City's interest in the total amount of the City's Deferred Payment Loan.
- Credit Reports on all Borrowers with a 15% or greater ownership interest.
- List of all real property assets and their value.
- An acceptable bid from an approved contractor. The approved contractor must be licensed, and provide proof of appropriate insurance coverage, covering the total cost of the
- rehabilitation work and including, but not limited to worker's compensation, general liability, and personal liability.
- Copy of the insurance policy for fire and extended coverage for 80% of the value of the property with City named as co-insured.

Permitted Rehabilitation Program Costs

CDBG or HOME funds will be used to support only the following eligible costs:

- Actual rehabilitation costs necessary to correct substandard conditions to comply with the City of Dallas building Codes, federal environmental conditions standards, and federal lead-based paint abatement requirements.
- Essential improvements including energy conservation-related repairs, and improvements to permit use of the rehabilitated units by persons with disabilities.
- Repairs to major building system in danger of failure.
- Costs, generated by the public sector, for processing and closing the financing for the project, such as: credit reports, fees for title evidence, fees for recordation and filing of legal documents, attorney's fees, permits, and appraisal fees.
- Cost for the relocation of tenants currently residing in the property at the date of initial application, who must be temporarily or permanently displaced as a direct result of the rehabilitation activity.

Involuntary Displacement

The City prohibits involuntary displacement of residents from developments receiving funding. If a development receives federal funds, the Uniform Relocation Act provisions will apply.

Eligible Costs

The following costs may be reimbursed with HOME funds:

Hard Costs	Soft Costs
Land and Structure Acquisition	Financing Fees & credit reports
Site preparation, including Demolition	Affirmative marketing, initial leasing & marketing costs
Construction Materials and Labor	Title binders and insurance
	Performance bonds and surety fees
	Recording fees
	Legal & accounting fees
	Appraisals
	Eligible Soft Costs
	Environmental reviews

CDBG funds may not be used for new building construction, in accordance with HUD regulations. However, CDBG funds may be used for all other reasonable and eligible costs in the above table.

Monitoring

The City is required by HUD to obtain information on rents and occupancy of HOME – assisted units to demonstrate compliance with the affordability rent requirements on an annual basis.

Additional Requirements for ALL Rental Housing Projects

Tenant Selection/Eligibility:

An owner of rental housing assisted with HOME or CDBG funds must adopt written tenant selection policies and criteria that:

- are consistent with the City's goal of providing housing for very low-income and low-income families;
- are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;
- provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
- give prompt written notification to any rejected applicant stating the grounds for the rejection

Income Eligibility and Re-certification:

Tenant incomes must be re-certified annually and verified with source documents every six years. If the income of a household in an assisted unit rises above 80% of Area Median Income, the household may continue to rent the unit and the household must pay monthly rent equal to the lesser of:

- The rent permitted by state law; or
- 30% of the family's adjusted monthly income at annual re-certification.
- If the project was financed with Low Income Housing Tax Credits, the tax credit rent prevails.

Acceptable Rents for HOME Projects Only

The HOME program has established rules in relation to acceptable rents. There are two rent standards: High HOME Rent and Low HOME rent. For properties with five (5) or more HOME assisted units, at least 20% of the units must have rents that meet the "Low HOME" criteria.

High HOME Rent: lesser of the Section 8 Fair Market Rents for existing housing OR thirty (30) percent of the adjusted income of a family whose annual income equals 65% of the area median income.

Low HOME Rent: Thirty percent of the tenant's monthly adjusted income OR thirty percent of the annual income of a family whose income equals 50% of the area median income.

OVERVIEW OF EXISTING FUNDING SOURCES

Federal Funding Sources

The City receives financial support from the U.S. Department of Housing and Urban Development (HUD) to assist low and moderate income families in obtaining affordable housing. The City receives several Entitlement (HUD) grants, which it can use to support its housing initiatives. HUD outlines certain regulations that apply when using grant funds. This policy document uses the HUD regulations as a basis and incorporates the City's own policies as adopted by City Council.

Community Development Block Grant (CDBG)

The Community Development Block Grant has been in existence since 1974. The primary objective of the CDBG program is to improve communities by providing decent housing, providing a suitable living environment, and expanding economic opportunities. The primary beneficiary of CDBG funds must benefit low to moderate-income persons; aid in the prevention or elimination of slums or blight; or meet an urgent need.

HOME Investment Partnership Program (HOME)

The HOME Investment Partnership Program has been in existence since 1990. The goals of the HOME program are to provide decent affordable housing to lower-income households, expand the capacity of nonprofit housing providers, strengthen the ability of state and local governments to provide housing, and leverage private sector participation. HOME funds may be utilized for rental activities, homebuyer activities, and homeowner rehabilitation activities. All HOME funds must benefit persons of low and moderate income.

HOME Match Requirement

All housing development projects must meet a twenty-five (25%) HOME matching requirement of contributions made from non-federal resources and may be in the form of one or more of the following:

- Cash contributions from nonfederal sources
- Forbearance of fees
- Donated real property
- Cost, not paid with federal resources, of on-site and off-site infrastructure that the participating jurisdiction documents are directly required for HOME-assisted projects
- Proceeds from multifamily affordable housing project bond financing
- Reasonable value of donated site-preparation and construction materials, not acquired with federal resources
- Reasonable rental value of the donated use of site preparation or construction equipment
- Value of donated or voluntary labor or professional services in connection with the provision of affordable housing

Neighborhood Stabilization Program (NSP)

The Neighborhood Stabilization Program was authorized under Division B, Title III of the Housing and Economic Recovery Act of 2008 (HERA) to help communities recover from the effects of foreclosures, abandoned properties, and declining property values. The City collects program income from this source and appropriates it on an annual basis.

State and Local Funding Sources

General Obligation Bonds

General Obligation Bonds were authorized under the 2017 bond package to help with infrastructure, economic development and housing, and related expenses as authorized by law. Economic Development and Housing have been allocated approximately \$55 million for the next five (5) years.

Tax Exempt Bond Financing (City of Dallas Housing Finance Corporation)

The City of Dallas Housing Finance Corporation (DHFC) was organized in 1984 in accordance with Chapter 394 of the Texas Local Government Code (Code). Under the Code, the purpose of the DHFC is to assist persons of low and moderate income to acquire and own decent, safe, sanitary, and affordable housing. To fulfill this purpose, the DHFC can be an issuer of tax exempt bonds. The DHFC may issue bonds to finance, in whole or in part, the development costs of a residential development or redevelopment; the costs of purchasing or funding the making of home mortgages; and any other costs associated with the provision of decent, safe, and sanitary housing and non-housing facilities that are an integral part of or are functionally related to an affordable housing development.

- **Affordable Housing Partnerships:** The DHFC can also partner with affordable housing developers for the production of multifamily housing. The DHFC can acquire an ownership stake in the development by becoming the General Partner (GP) of an ownership entity, right of refusal to purchase the improvements, and owning and controlling the land. DHFC is the sole member of the GP. Fifty-one percent of the units must be set aside for affordable housing. If all of the aforementioned criteria are met; then the development can benefit from a tax exemption. Additionally, the DHFC can be the General Contractor to allow for sales tax exemption on construction materials.

Strategies, Tools and Programs that Will Require Additional Action

Housing Trust Fund

Establish a Dallas Housing Trust Fund (DHTF) that allows monies to be used to make loans to support the production goals of the Housing Policy. At a future date, staff will seek Council approval to authorize a one-time transfer of a minimum of \$7 million in unencumbered fund balances from high-performing Tax Increment Financing Districts (TIFs), as well as \$7 million from Dallas Water Utility funding set aside to support developments. Staff will further research potential dedicated revenue sources for the DHTF, including unencumbered fund balances from high-performing TIFs, property tax revenues from developments that have been built on previously City-owned land, proceeds from the sale of properties acquired by the City following non-tax lien foreclosures, among other sources.

Tax Increment Financing

Creation of a non-contiguous Tax Increment Finance District for areas not already located in an existing TIF District will leverage TIF on projects that propose to meet the unit production goals with affordability requirements.

Voluntary Inclusionary Zoning

In addition to development subsidies, the City may also incentivize the production of rental units via voluntary inclusionary zoning. Voluntary inclusionary zoning is a strategy by which the City can provide development bonuses to encourage the construction of mixed-income housing in multi-family and mixed-use zoning districts. At a future date, staff will seek council approval to amend the Development Code to allow for by-right development bonuses, including increases in maximum height and lot coverage, for developments that provide mixed-income housing in MF-1, MF-2, MU-1 and MU-2 districts. While these development bonuses would be available regardless of whether the MF-1, MF-2, MU-1 or MU-2 district is in a Reinvestment area, the City could layer in development subsidies for projects in Redevelopment and Stabilization areas to encourage more income stratification or a higher-percentage of affordable units. Furthermore, this strategy, as it has already been briefed to the Dallas Zoning Ordinance Advisory Committee (ZOAC), will encourage such mixed-income housing developments to adopt design principles that encourage walkability, reduce the need for parking, and require the provision of more open space.

Neighborhood Empowerment Zones

At a future date, staff will seek council approval to designate Neighborhood Empowerment Zones (NEZ) in certain Reinvestment Areas. Once a NEZ is established, staff will implement the following programs and strategies to preserve affordability and deconcentrate RECAP:

- a property tax freeze for up to ten (10) years for homeowners if they are making improvements to their property resulting in more than 25% increase in value,
- development fee rebates (permits, planning, zoning, parkland dedication, landscape & tree mitigation),
- encourage Incentive Zoning/Density Bonuses to support the creation of mixed income communities,
- allow Accessory Dwelling Units,
- designate Homestead Preservation District overlay where applicable, and

Sublease Program

Furthermore, staff will pursue council approval to create a Sublease Program which incentivizes a landlord/developer to facilitate the rental of units to voucher holders. This program is administered through the Dallas Housing Finance Corporation.

Resolutions of Support or No Objection

The City of Dallas (the City) has developed a policy for developers requiring Resolutions of Support or No Objection for multi-family rental housing development projects seeking Housing Tax Credits (HTC) through the Texas Department of Housing and Community Affairs (TDHCA). Each year, the TDHCA is required to develop the Qualified Allocation Plan (QAP) to establish the procedures and requirements relating to the allocation of Housing Tax Credits. Once the QAP is submitted and approved by the Office of Governor, which occurs in December of each year, the adopted QAP will be published in the Texas Register.

In the administration of its HTC Program, the TDHCA awards application points for a resolution from a Governing Body of a local municipality on the following basis:

Within a municipality, the application will receive:

- seventeen (17) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the application or development; or
- fourteen (14) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the application or development.

Within the extraterritorial jurisdiction of a municipality, the Application may receive:

- eight and one-half (8.5) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- seven (7) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development

The City will issue a Request for Applications for Resolutions of Support or No Objection in December of each year and bring forth recommendations to the Economic Development and Housing Subcommittee and City Council in February of each year. This schedule is in line with the TDHCA program calendar.

Evaluation Criteria

The City has developed a self-scoring application in order to conduct a comprehensive, fair and impartial evaluation of all applications received in response to the Request for Applications process. Each application is analyzed to determine overall responsiveness and qualifications under this policy. Evaluation Criteria are outlined below:

- 1. General Partner and Property Management Experience** – Up to 20 total points (as determined utilizing the below general partner and property manager point tables)

General Partner – up to 10 of the 20 total experience points. To receive experience points under this category, the proposed general partner(s), or a key individual(s) (officer, managing member or principal) within the proposed general partner organization (the “general partner”), must meet one of the following tests for each counted project.

To obtain points for a current project owned by the proposed general partner, the applicant must certify that the development has:

- been in service and continuously operated for three or more years;

- yielded positive operating cash flow from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.); and
- held reserves as required by the partnership agreement and any/all applicable loan agreements.

To obtain points for projects previously owned by the proposed general partner, the applicant must certify that:

- the ending date of ownership or participation was no more than 10 years before the deadline associated with the subject application;
- the previously owned development was yielding positive operating cash flow from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) at the time of disposition; and
- the project was holding reserves as required by the partnership agreement and any/all applicable loan agreements at the time of disposition.

Experience of the General Partner – Up to 10 points	Points
1-2 Multi-family rental housing projects in service more than 3 years	1
1-2 Sec. 42/142/HOME projects in service more than 3 years	3
3-6 Multi-family rental housing projects in service more than 3 years	4
3-6 Sec. 42/142/HOME projects in service more than 3 years	6
7 or more Multi-family rental housing projects in service more than 3 yrs.	7
7 or more Sec. 42/142/HOME projects in service more than 3 years	10

“Sec.42/142/HOME” means Internal Revenue Code §42 “Low-income housing credit”, §142 “Exempt facility bond – qualified residential rental project”, and/or 24 CFR Part 92 - HOME Investment Partnerships Program (“HOME”)

“Multi-family housing” means any multi-family rental housing project of 20 units or more that is not subject to IRC §42, IRC §142, or 24 CFR Part 92 requirements.

2. Property Manager – Up to 10 of the 20 total experience points.

To receive experience points under this category, the proposed property management entity must meet one of the following tests for each counted project.

To obtain points for a current project managed by the proposed property management entity, the applicant must certify that the property has:

- been in service and continuously managed by the proposed property management entity for three or more years;
- yielded positive operating cash flow from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.); and
- held reserves as required by any/all applicable partnership agreement and loan agreements.

To obtain points for projects previously managed by the proposed property manager, the applicant must certify that:

- the ending date of management agreement was no more than 10 years before the deadline associated with the subject application;
- the previously managed development was yielding positive operating cash flow from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) at the time of termination of the management agreement; and
- the project was holding reserves as required by the partnership agreement and any/all applicable loan agreements at the time of termination of the management agreement.

Experience of Property Manager – Up to 10 points	Points
1-2 Multi-family rental housing projects managed more than 3 years	0
1-2 Sec. 42/142/HOME projects in service more than 3 years	3
3 or more Multi-family rental housing projects in service more than 3 yrs.	4
3-6 Sec. 42/142/HOME projects in service more than 3 years	6
7 or more Multi-family rental housing projects in service more than 3 yrs.	7
7 or more Sec. 42/142/HOME projects in service more than 3 years	10

“Sec. 42/142/HOME” means Internal Revenue Code §42 “Low-income housing credit”, §142 “Exempt facility bond – qualified residential rental project”, and/or 24 CFR Part 92 - HOME Investment Partnerships Program (“HOME”)

“Multi-family housing” means any multi-family rental housing project of 20 units or more that is not subject to §42, §142, or 24 CFR Pat 92 requirements.

3. Nonprofit Organization Participation – 10 points

To receive these points, the nonprofit organization must have controlling interest (e.g., greater than 50 percent ownership in the General Partner) in the project. If ownership is a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner. If ownership is a limited liability company, the nonprofit organization must be the controlling Managing Member. Additionally, the nonprofit entity or its affiliate or subsidiary must be the developer or a co-developer of the project.

The nonprofit organization is not required to elect to apply under the State’s Nonprofit Set-aside in order to receive these points.

4. Redevelopment Areas – 20 points

Project must be located in one of the four Redevelopment Areas – 1) Midtown, 2) High Speed Rail, 3) Wynnewood, and 4) Red Bird areas.

5. Stabilization Target Areas – 20 points

To receive these points, the Project must be located in one of the eight Stabilization Target Areas – 1) LBJ Skillman 2) Vickery Meadow, 3) Casa View, 4) Forest Heights / Cornerstone Heights, 5) East Downtown 6) The Bottom, 7) West Dallas, and 8) Red Bird North.

6. Emerging Market Area – Up to 10 points.

To receive these points, the Project must be located in one of the three Emerging Target Areas – 1) Southern Gateway 2) Pleasant Grove, and 3) University Hills.

7. Determination of Project Feasibility – Up to 20 points (5 points each, no more than 20 points can be awarded in this category)

- Proposed rent schedule consistent with TDHCA rent limits on rent-restricted units.
- Appropriate vacancy and collection loss assumptions in the project pro forma are consistent with TDHCA HTC requirements.
- Reserves in the pro forma are consistent with TDHCA HTC requirements.
- Completed Market Feasibility Report with conclusions supporting the applicable project pro forma assumptions completed or underway.

8. Project Site Characteristics – Up to 10 points (5 points each)

Project meets land use density and City of Dallas zoning requirements at time of application.

9. Transit Amenities – Up to 28 points (zero to four points each, no more than 28 points can be awarded in this category)

The following transit amenity matrix shall be used in scoring the project:

Amenity	Points		
	1/4 mile or less	>1/4 mile and <1/2 mile	<1/2 mile and up to 1 mile
Bus Station or Stop	5	3	1
Public Park	5	3	1
Full Scale Grocery Store	5	3	1
Community or Senior Center	5	3	1
Aging & Disability Resource Center	5	3	1
Amenity	1/2 mile or less	>1/2 mile and <1 mile	<1 mile and up to 2 miles
Qualifying Medical Clinic or Hospital	5	2	1
Amenity	20 minutes or less	>20 min. and <40 min.	<More than 40 min.
Transit time to Major Employment Center	5	2	0

10. Project Readiness –Up to 10 Points (*5 points each, no more than 10 points can be awarded in this category*)

- Applicant has secured site control per TDHCA HTC definition of site control.
- Environmental Report (s) has/have been completed.

11. Resident Services –Up to 15 points (*5 points each; no more than 15 points can be awarded in this category*)

- The equivalent of one (1) FTE resident service coordinator for every 600 project bedrooms.
- Project provides or has agreements with third party service providers to provide on-site educational, wellness and/or skill building classes
- Project provides on-site, licensed child care or after school program that operates at least 20 hours per week.

140 total points are provided under the above scoring preferences.

To receive a staff recommendation for a **Resolution of Support**, the applicant must score 85 points. Any applicant receiving less than 85 points, shall be eligible to receive a staff recommendation for a Resolution of No Objection, provided the application receives at least 6 experience points under the *I. General Partner and Property Manager Experience* of the above scoring methodology.

Community Housing Development Organizations (CHDOs)

A CHDO is defined under 24 Code of Federal Regulations (CFR) Part 92.2 as a nonprofit organization (501©3 or 4) organized under state law; has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; is neither controlled by nor under the direction of individuals seeking to derive profit or gain from the organization. While a CHDO may be sponsored or created by a for-profit entity whose primary purpose is **not** the development or management of housing, such as a builder, developer or real estate management firm, the for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body and the board members appointed by the for-profit entity may not appoint the remaining board members. A CHDO does not include a public body although a locally chartered organization may qualify under certain conditions.

The CHDO must be free to contract for goods and services from vendors of its own choosing. The CHDO must comply with certain financial accountability standards as described in the 24 CFR 84.21 Standards for Financial Management Systems. Among the primary purposes of the CHDO's organization, as outlined in their organizational charter, articles of incorporation, resolutions or bylaws must be the provision of decent housing that is affordable to low-to-moderate income persons. A CHDO must remain accountable to the low-income community residents by: **1)** maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of a low-income neighborhood organization; **2)** providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, site selection, development and management of affordable housing.

A service area in urban areas such as Dallas, "community" may be defined as a neighborhood, or neighborhoods, city, county or metropolitan area. Additionally, CHDOs are subject to the affirmatively furthering fair housing rules which state that housing should not be located in areas of minority concentration or with high poverty rates. Historically, Dallas CHDOs have elected to work in areas where disinvestment has occurred, and where high concentrations of poverty exist. CHDOs should grow and develop the capacity to partner with for-profit developers to produce market rate housing in areas of disinvestment. Furthermore, CHDOs should work in areas with low poverty rates, have access to a quality education, transportation, and jobs. These high opportunity areas lack quality affordable housing options.

A CHDO must demonstrate the capacity to carry out the activities assisted with HOME Investment Partnership Program (HOME) funds within **12 months** of the project commitment. CHDO's may satisfy the HOME requirement by hiring experienced key staff members who have successfully completed similar projects or a consultant with the same type of qualified experience and a plan to train appropriate key staff member of the organizations. CHDO's must demonstrate a minimum of one-year experience in serving the community in which the assisted housing will be located before funds can be reserved for the organization. This requirement can be satisfied by a parent organization in some cases if a CHDO is formed by a group of local churches or local service organizations. CHDOs must be certified by the City of Dallas to be awarded CHDO set-aside funds for the development of housing and operating assistance.

Set Aside

HUD requires that 15% of the HOME allocation each year be made available to Community Housing Development Organizations (CHDOs) for the development of affordable homebuyer or rental housing.

Operating

In addition, the City can allocate up to 5% of the HOME allocation each year operating expenses for CHDOs. These funds provide operating funds to Community Housing Development Organizations based on financial need and the expectation that the organization is utilizing or will utilize the City's HOME CHDO set aside funding within 24 months of the award.

HOME funding provided for CHDO operating expenses may not exceed \$50,000 or 50% of the organization's total annual operating expenses for that fiscal year, whichever is greater. CHDO operating expense funds may not supplant CHDO set-aside funds for project costs.

Certification

To be eligible to receive HOME CHDO set-aside funding and Operating Assistance Grants, a CHDO must be certified by the City of Dallas. CHDO certification must be done prior to the commitment of funds for a set-aside development, and there cannot be a general CHDO certification. The City can work in advance to determine if a CHDO will likely meet the requirements for certification prior to funding considerations. A CHDO must continue to be certified throughout the development of a project and during the affordability period. the City has developed the "Community Housing Development Organization (CHDO) Policy, Procedure, and Standards" document to outline the process and requirements for CHDO certification. This can be found in Appendix 5.

APPENDICES

APPENDIX 1

Single Family Development Underwriting

A. Eligible Developer Applicants

The City of Dallas will fund developers of affordable single-family homebuyer units, including for-profit developers, non-profit developers, and City of Dallas-designated CHDOs, with City of Dallas HOME single-family development program funds. Developers must demonstrate the capacity and previous experience developing projects of the type presented in their proposals. Prior to committing funds, the City of Dallas will review the status of any organization seeking funds from the CHDO set-aside to ensure that it meets all HOME requirements and that it has sufficient staff and financial capacity to carry out the project.

Project Location

Projects must be located within the city limits of Dallas.

Project Types

Funds will be provided for new construction projects. In general, the City of Dallas will require that all homes constructed have a minimum square footage of 1,200 sq ft, at least 3 bedrooms, and at least 1.5 bathrooms. RFPs issued by the City of Dallas may further specify or provide priority for eligible project types.

Parameters of HOME Investment

Applications must include an investment of \$1,000 in HOME funds per HOME unit. In no case will the City of Dallas investment exceed the maximum HOME investment allowed under 24 CFR 92.250.

Additionally, for projects involving both City of Dallas other HOME funds, the combined HOME funding investment shall not exceed the total maximum HOME investment allowed under 24 CFR 92.250.

Typically, the City of Dallas will also establish a maximum cap on its investment in a single home. Such a limit will be based on the availability of funding and other City of Dallas priorities and will be addressed in any NOFA issued by the City of Dallas.

B. Eligible Costs

Costs funded with the City of Dallas HOME funds must be eligible according to HOME Final Rule 24 CFR 92.206. The following additional limitations also apply:

- HOME funds shall not be used for luxury improvements according to 24 CFR 92.205.
- Acquisition costs shall be supported by an independent appraisal of the property. Acquisition costs exceeding the appraised value of the property will be ineligible for HOME funding reimbursement.
- HOME funds shall not be used for non-residential accessory structures such as free-standing garages, carports, or storage structures. Applicants must delineate project costs in a manner that allows free-standing structures to be clearly paid for using other project funds.

City of Dallas Eligible Project Soft Costs

The HOME program allows the City of Dallas to include, as project costs, its internal soft costs specifically attributable to a HOME project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. Projects must provide budget allowances for “City of Dallas-Lender Due Diligence & Legal Costs” in the project’s sources and uses.

Cost Reasonableness

Per the requirements of 92.250(b) and 2 CFR 200 Subpart E (formerly known as OMB Circular A-87), all project costs must be reasonable, whether paid directly with HOME funds or not. The City of Dallas will review project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs.

Identity of Interest

Developers must disclose any identity of interest situations that may occur when contracting with related companies during either the development or ongoing operation of the project. City of Dallas staff must be allowed the opportunity to conduct a cost analysis to determine costs reasonableness. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

C. Property Standards

To meet both HOME regulations and City of Dallas goals, all HOME-funded projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

Construction must meet all local codes. City of Dallas has adopted and enforces the following codes with amendments:

- 2012 International Building Code
- 2012 International Mechanical Code
- 2009 International Energy Conservation Code
- 2012 International Existing Building Code
- 2011 National Electric Code
- Chapter 11 of the 2009 International Residential Code

All HOME projects must meet applicable Section 504/UFAS requirements. Pursuant to 24 CFR 8.29, single-family housing developed with Federal funds must be made accessible upon the request of the prospective buyer if the nature of the prospective occupant’s disability so requires. Developers must ensure that projects are designed in a way that can accommodate such a request. Should a prospective buyer request a modification to make a unit accessible, Developer must work with the homebuyer to provide the specific features that meet the need(s) of the prospective homebuyer or occupant. If the design features that are needed for the buyer are design features that are covered in UFAS, those features must comply with the UFAS standard. Developers shall be permitted to depart from the standard in order to have the homebuyer/occupant’s needs met.

Site shall be served by public sewer, public water, and public road. Sites should have ready access to recreational opportunities such as parks, playgrounds, etc., nearby shopping and

services including transportation, grocery, banking, and medical facilities, and otherwise be located in neighborhoods that provide amenities that support residential development. The City of Dallas also generally prefers that sites have safe, walkable connections—including sidewalks—to the surrounding neighborhood.

Site shall be in a designated Fire District or served by a Fire Department;

Units must be equipped with the following appliances: Refrigerator, range/oven, dishwasher, and garbage disposal. Developers may also propose to include in-unit clothes washers and dryers, microwave/vent fan combination units, as appropriate. If the Energy Star program rates the type of appliances being installed, the developer must furnish the units with Energy Star rated appliances. Note however that not all appliances are rated by the Energy Star program.

D. Sales Price

Housing developed with HOME funds must be modest, and the sales/purchase prices for homes developed under this program cannot exceed the HOME Homeownership Value Limits published by HUD in effect at the time of project commitment. The City of Dallas will identify the applicable limits in any NOFA issued.

Units produced under the City of Dallas' single-family development program must be sold at the fair market value as determined by an "as-completed" or "subject to completion" appraisal completed by an independent state licensed appraiser. Developers shall submit such an appraisal prior to project commitment, and the City of Dallas may require an updated appraisal prior to construction completion if the appraisal is more than 9 months old at that point. Any reductions in list or sales price below the City of Dallas-approved appraised value must be approved in writing by the City of Dallas and will generally require updated market information.

E. Eligible Homebuyers

Homebuyers for units produced under the City of Dallas single-family development program must meet the eligibility criteria set forth in the City of Dallas Homebuyer Assistance Program (DHAP) guidelines.

F. Environmental Review Requirements

Federally-assisted projects are subject to a variety of environmental requirements. Developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with City of Dallas staff prior to entering into a purchase agreement or submitting an application.

All projects shall be implemented in accordance with environmental review regulations as defined 24 CFR Part 58.

The City of Dallas shall be responsible for conducting the environmental review and completing all necessary public notifications, and the request for release of funds (RROF) from HUD. The applicant is responsible for cooperating with the City of Dallas in the environmental review process and providing information necessary for the City of Dallas to fulfill its responsibilities under Part 58 and other applicable regulations.

Submitting an application for HOME funds triggers environmental review requirements under 24 CFR 58, including the National Environmental Policy Act (NEPA). Once an application for federal funds is submitted, a development proposal is now subject to the environmental review

requirements and requires an environmental clearance and issuance of a Release of Funds (ROF) by the US Department of Housing and Urban Development.

Developers are prohibited from undertaking or committing or expending any funds to (including non-federal funds) any physical or choice-limiting actions on the site prior to an environmental clearance as required by Part 58. Physical and choice limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used, and taking a choice limiting action prior to completion of the required environmental clearance process will result in the denial of any HOME funds from the City of Dallas.

G. Other Federal Requirements

Nondiscrimination and Equal Opportunity

The following federal nondiscrimination and equal opportunity guidelines apply to all projects and affect both development and sales of assisted housing:

- The Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100 et seq.;
- Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107;
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d- 2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
- The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR part 146;
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title;
- Title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135;
- Executive Order 11246, as amended by Executive Orders 11375, [[Page 41]] 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966- 1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60;
- Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971- 1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and
- Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). The nondiscrimination provisions of Section 282 of the National Affordable Housing Act of 1982.

Uniform Relocation Act (URA)

All projects fall under requirements of the URA. Any project resulting in permanent relocation/displacement of households will not be funded by the City of Dallas. Applicants must further document that any purchase of property meets the requirements of URA, including

provision of notices to the seller identifying the transaction as a voluntary sale not under the threat of eminent domain. To ensure compliance with URA, applicants should consult the City of Dallas to understand the requirements of URA and reference the URA forms included in the RFP prior to submitting an application involving an occupied property.

Davis Bacon

Davis Bacon federal prevailing wage requirements shall apply to all projects with 12 or more units assisted with HOME funds.

Excluded Parties

The City of Dallas will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards. Nor may the developer contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

H. Ongoing Project Requirements**Deadlines**

Construction Start- If construction is not started within 12 months of the date the City of Dallas commits funds to a project, the commitment will be subject to cancellation. If the project is cancelled as a result of failure to meet this deadline, the Developer must repay to the City of Dallas any HOME funds disbursed for the project.

Completion Deadline- Project completion occurs when construction is complete, all HOME funds have been disbursed by the City of Dallas and drawn from the US Treasury, title to the property has transferred to an eligible buyer, and required completion data has been entered in HUD's IDIS system. Project completion must occur within 2 years of the date of commitment of funds to the project. If the Developer fails to meet this 2-year deadline, it must repay to the City of Dallas any HOME funds disbursed for the project.

Sales Deadline- Pursuant to 24 CFR 92.254(a)(3), Developers must have a ratified sales contract with an eligible buyer for each HOME-funded unit within nine (9) months of completion of construction or the unsold units must be converted to rental housing or the project will be deemed ineligible and all HOME funds drawn must be repaid to HUD.

If a unit is unsold after six (6) months, the Developer must present an updated sales and marketing plan to the City of Dallas outlining steps being taken to identify buyers. At the City of Dallas option, the Developer may be required to i) take further steps--such as listing the home with a licensed realtor, adjusting the sales price, etc.—as the City of Dallas may require to facilitate the sale of the home or ii) to transfer title to the City of Dallas or to another entity selected by the City of Dallas that can otherwise identify buyers prior to the regulatory deadline.

At the City of Dallas option, if a unit remains unsold after nine (9) months, the developer shall be required i) to repay the entire HOME investment, including any City of Dallas project soft costs; ii) to convert the project to rental housing in accordance with 24 CFR 92.252; or iii) to transfer title to the City of Dallas or to another entity selected by the City of Dallas for conversion to rental housing.

Units converted to rental housing must be rented to eligible tenants in accordance with 24 CFR 92.252, which includes tenant income eligibility and rent limit requirements. Further, any units converted to rental properties shall be operated in compliance with the City of Dallas Rental Housing Program guidelines.

Reporting and Record Keeping

To allow effective oversight of funded projects and document compliance with applicable HOME requirements, all projects must submit periodic reports to the City of Dallas. While this section outlines standard reporting requirements, the City of Dallas reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME requirements or City of Dallas policy. Additionally the City of Dallas reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

- Developers are required to report monthly during the development phase and sales phase. During the construction phase, developers must provide monthly reports detailing construction progress and barriers to progress, copies of invoices being paid, and evidence of appropriate lien waivers.
 - During the sales phase, developers are required to provide monthly reports detailing the number of additional sales, total sales, and marketing activity. These reports are required until all units are sold.
 - The City of Dallas may require more frequent reporting due to findings identified during the development and sales phases.
 - At the City of Dallas option, Developers may be required to obtain and submit an audit of project costs (i.e. cost certification) prepared by an independent Certified Public Accountant.
 - Developers shall allow City of Dallas, HUD, State of Texas, the Comptroller General of the United States (aka the GAO), and all other pertinent Federal or State agencies or their designated representative the right to inspect records and property.
- Conflict of Interest

To comply with HOME requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided. Developers shall maintain compliance with all HUD conflict of interest provisions as stated in 92.356(f).

Developers with officers, employees, family members, consultants, or agents that are otherwise eligible to purchase HOME funded-units must receive waiver/approval from City of Dallas staff before entering into a sales agreement with HOME eligible employees. 92.356(f) provisions apply to all HOME projects.

I. Structure of Transaction

Loan Types and Terms

The City of Dallas will provide HOME funds in the form of a loan to the entity that owns the property. No grants will be awarded, and funding commitments are not transferable without prior written City of Dallas approval.

The City of Dallas HOME Loan may be used for acquisition and construction financing. Proceeds of the HOME loan will only be released following satisfaction of all requirements outlined below.

In all cases, the HOME loan will:

Have a maximum term of 2 years;

- Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, except that repayment will be limited to the net proceeds of a City of Dallas-approved sale to a low-income buyer. Net sales proceeds will exclude any portion of the sale proceeds used to repay senior construction debt, return of City of Dallas-recognized developer equity, approved sales costs, and any HOME-assistance transferred to the buyer(s) at closing as direct homebuyer assistance.; and
- Secured with a promissory note, mortgage, and appropriate UCC liens. Mortgages will be recorded with the Dallas County Recorder of Deeds and generally may be subordinate only to an approved amortizing first mortgage.

Guarantees

Unless otherwise determined by the City of Dallas, all underlying individuals, corporate entities, partnerships, or limited liability companies with an interest in the project will be required to provide a completion guarantee including provisions guaranteeing construction completion of the project. For nonprofit organizations, including community housing development organizations (CHDOs), a guarantee shall not be required, but in all cases the City of Dallas may require a performance bond or irrevocable letter of credit acceptable to the City of Dallas to ensure project completion.

HOME Agreement

In addition to any financing documents, developers of HOME-financed projects must sign a HOME agreement with the City of Dallas. The HOME agreement will identify requirements for compliance with the HOME regulations and the City of Dallas Single-Family Development Program requirements and will remain in effect in the event of any prepayment of the HOME loan.

J. Underwriting & Subsidy Layering Reviews

Market Demand

Developers must, as part of their application, provide evidence of sufficient demand for the proposed units. Developers shall provide information from the multiple listing service pertaining to recent sales in the neighborhood, average time on the market for recent sales, availability of other product and average “months of supply” currently available, and any known or planned projects.

Additionally, Developers must complete the HOME Sales and Marketing Plan, identifying among other items the profile of typical buyers, relationships with homeownership counseling agencies or other sources of buyer referrals, and plans for marketing the homes.

In some cases, the City of Dallas may only commit to a specific project (or may limit the number of projects under construction by a given developer) upon demonstration that a home has been pre-sold to an identified low-income buyer who has, at least, executed a reservation or initial purchase agreement with the Developer.

Project Underwriting

All HOME applications must include financial statements from all underlying owners and guarantors. Developers must have a net worth equal to 10% of the total development cost with net liquid assets equal to 3% of the total development cost.

Applicant must provide the amounts and terms for any other financing being provided to the project.

Proforma Requirements

The proforma must explicitly show:

- An itemized breakdown of development hard and soft costs by unit including any allowances for soft costs such as architectural fees, carrying costs, etc;
- The hard costs of any stand-alone accessory buildings, including free-standing garages, carports, or storage structures should be specifically itemized in the Development Sources and Uses so that the City of Dallas can complete preliminary HOME cost allocation calculations. (Stand-alone accessory structures like a detached garage may be included in the project but are not HOME-eligible and must be paid for with another funding source.)
- Costs and fees to be paid to the City of Dallas as permitted by the HOME program. The HOME program allows the City of Dallas to include, as project costs, its internal soft costs specifically attributable to the project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and monitoring award of funds to a project. The City of Dallas will notify Developers of the amounts to include in their Development Sources and Uses for “City of Dallas-Lender Due Diligence & Legal Costs.”
- Estimates of the sales transaction to an eligible homebuyer, including a calculation of the proposed buyer’s ability to qualify for a mortgage meeting City of Dallas requirements, the anticipated need to provide direct HOME assistance (e.g. downpayment and closing cost assistance) to the buyer, projected sales costs (e.g. realtor’s commissions), and the distribution of sales proceeds (including toward repayment of private construction financing)

Cost Limitations

All project costs must be reasonable and customary. The City of Dallas reserves the right to review any line-item cost to ensure that total project costs are not excessive. Additionally, HOME projects will be subject to the following specific cost limitations:

- The maximum allowable developer fee is 15% of total development costs less the developer fee itself and seller’s closing costs.
- Acquisition costs are limited to fair market value as determined by a third-party appraisal.
- Unless prior approval has been obtained from the City of Dallas, all project hard costs and all project professional fees should be the result of a competitive bidding process. While developers are not subject to federal procurement rules and may use less formal bid processes, the City of Dallas generally expects developers to seek multiple bids and identify the most advantageous bidder based on cost, track record, and other pertinent factors.

Other Public Funding Sources

Developers must disclose all other public and private sources or applications for funding with their initial HOME Single-Family Development application to the City of Dallas at the time of application and upon receiving any additional commitments of public source funding. The City of Dallas will conduct a subsidy layering review as part of the underwriting process for all projects. Using its underwriting criteria, the City of Dallas will assess the project and may require changes to the transaction to ensure that return to the owner/developer are not excessive. Changes may include a reduction in HOME funds awarded.

The City of Dallas will consider adjusting its underwriting in consultation with other public funders, if applicable, to the project. The City of Dallas retains, at its sole discretion, the power to decide whether to accept alternative standards.

K. Construction Process

City of Dallas Construction Inspections

The City of Dallas must be provided with copies of all contractor invoices and provided reasonable notice of monthly draw inspections during the construction period. City of Dallas staff will participate in all draw reviews whether or not the specific draw is being funded with HOME or other project funds and conduct inspections to ensure that the project is progressing and that work completed is consistent with all applicable HOME requirements.

Davis Bacon

When Davis Bacon applies to a project, the City of Dallas must be provided with compliance documentation throughout the construction period. Prior to commencing construction, the City of Dallas must approve current wage determinations applicable to the project. The contractor will be required to provide weekly payroll forms to the City of Dallas and allow access to the site and workers for the purpose of completing worker interviews.

Drawing City of Dallas HOME Funds

Proceeds of the HOME loan will only be released as reimbursement for eligible project costs following:

- Review and acceptance of appropriate source documentation by the City of Dallas including evidence of appropriate lien waivers and/or title endorsements.
- A determination by the City of Dallas that all HOME requirements pertaining to the development of the Project have been met, including but not limited to monitoring of Davis Bacon compliance.

For nonprofit developers, including CHDOs, the City of Dallas may release payment based upon outstanding invoices for costs incurred and work completed. In such cases, the City of Dallas reserves the right to disburse through a title company, directly to the vendor, or with two-party checks.

Project Closeout

Developers are required to submit homebuyer eligibility packets to the City for approval of the homebuyers. Data shall include elderly status, race, gender, female head of household, number of household members, and income.

The City of Dallas requires a copy of the final project sources and uses statement and, at the City of Dallas option, may require the submission of the project cost certification prepared by an independent Certified Public Accountant following completion of construction and payment of all development costs.

APPENDIX 2

Rental Development Underwriting

In reviewing applications for HOME assistance, as required by §92.250(b) and prudent business practices, the City's underwriting framework includes evaluations of:

- **Regulatory requirements applicable to the project**, including compliance (or ability to become compliant) with HOME's affordability restrictions, property standards, and cross-cutting federal requirements;
- **Market risk**, including whether or not sufficient demand exists for the project, the anticipated lease-up period, and whether general economic conditions and other competition supports ongoing viability;
- **Developer risk**, focusing on whether the owner/developer (including but not limited to the underlying owners of special purpose entities) have the technical capacity to develop and operate the property and the financial capacity to safeguard public funds and backstop the project if the event of poor financial performance; and
- **Project risk (or "financial underwriting")**, testing the economic and financial projections for the transaction including both sources and uses as well as ongoing operating assumptions. This includes confirmation that all sources of project financing are available, commercially reasonable, and have been appropriately maximized prior to awarding HOME funds.

Market Assessment

All HOME project applications must include a third-party market study prepared in a manner consistent with TDHCA's market analysis requirements. Unless otherwise approved by the City, market studies shall be prepared by providers included on the list of TDHCA Approved Market Analysts. Owner's may generally submit the market study used in conjunction with the Owner's LIHTC application, if applicable. Market studies must be less than one year old at the time of commitment of HOME funds. For market studies that are more than one year old, the City will typically require an update from the original analyst or a new market study from another analyst. Proposed rent levels must be supported by the applicant's market study and be within HOME regulatory limits.

Additionally, the market study should demonstrate the following:

- All units, including any "market rate" units as well as any units with income/rent restriction imposed by other programs such as LIHTC, must demonstrate viability within the primary market area taking into account any known rent concessions being offered by competing properties;
- Income and rent restricted units must have "discounts" of at least 15% relative to comparable un-restricted units;
- Achievable occupancy rates, based on a comparison of comparable properties in the primary market area, must be at or above 95% (physical occupancy);
- Capture rate for the development as a whole is no more than 10%, and no capture rate for specific unit sizes (e.g. 3-bedroom units) exceeds 25%; and
- Absorption can be expected to result in underwritten occupancy levels within six (6) months of units being ready for occupancy.

For projects not meeting these standards the City, in its sole discretion, may also consider the following:

- For project targeting special needs populations (e.g. homeless households, domestic violence victims, veterans, or other specific subpopulations), the City may accept higher capture rates if data from the local Continuum of Care and/or service providers specializing in the targeted populations (e.g. VA service centers) suggest an adequate pipeline of eligible renters exists and will be consistently referred to the development.
- For existing projects being rehabilitated, the City will consider the recent operating history of the project in terms of actual rents charged/received, eligibility of in-place tenants, and the like for evidence that the development's projections are supported by actual performance.

The City may also consider offsetting the risk of relatively “weaker” market study findings by offering HOME assistance as permanent debt only, to be disbursed following actual lease-up of the development at proforma levels and achievement of stabilized occupancy.

Developer and Development Team

In most cases, projects considered by the City will be owned by single-purpose, single-asset entities created to hold title the development. For various purposes, including structuring necessary to comply with industry norms and take advantage of other funding sources such as LIHTC, the “owner” and “developer” of a project are often legally distinct entities, even if ultimately owned and controlled by the same underlying parties.

Developer Technical/Professional Capacity

In evaluating the capacity of the “developer” the City will use the term more loosely to refer collectively to the underlying corporate entities and individuals that will own and control the single-purpose entity (excluding the investor member/limited partner). Additionally, the City requires various guarantees and indemnities from all of the underlying corporate and individual owners of the various limited partnership or limited liability corporation entities involved in the ownership and development of the project.

Developers should demonstrate:

- Recent, ongoing, and successful experience with the development of similar regulated affordable housing; and
- The presence of adequate staff, with specific experience appropriate to their role in the project, to successfully implement and oversee the project. This includes the assembly and oversight of the development team.

The City requires applicants to provide lists of real estate owned (including partnership/membership interests) by the developer as well as all projects underway. The City will review the performance of those projects, including financial factors like net occupancy, actual DCR, cash flow received, outstanding loan balances, and net equity of individual projects and the developer's overall portfolio.

Applicants are also required to provide descriptions of the role played by specific staff members relative to the proposed project along with resumes or other similar information demonstrating experience appropriate to the assigned staff member's role.

Financial Capacity

Developers must also demonstrate the financial capacity to support the proposed project both during construction and lease-up as well during ongoing operations. This includes not just that the applicant has sufficient financial resources but that it has adequate financial systems in place to appropriately manage project funding, accurately account for all project costs, and provide reliable reporting to the City and other project funders.

At minimum, the City will review audited financial statements, interim financial statements, and individual personal financial statements to ensure that:

- The “primary” development entity’s most recent audit must demonstrate compliance with Generally Accepted Accounting Principals (GAAP) and must not express material weaknesses in the entity’s system of internal controls or financial management systems;
- The developer’s net worth (including the un-duplicated net worth of other guarantors) is equal to at least 10% of the total development cost of all projects underway (i.e. those that have received funding commitments from HOME or LIHTC but have not yet been completed and converted to permanent financing); and
- The developer has net liquid assets (current assets less current liabilities) equal to at least 3% of the total development cost of all projects underway.

Development Team

The City will also review the capacity of the development team including but not limited to the general contractor, architect, engineer, market analyst, management company, accountant, attorney, and any other specialized professionals or consultants.

As a whole, the development team should have the skills and expertise necessary to successfully complete and operate the development. Inasmuch as possible, on balance the development teams should have worked successfully on other projects in the past. That is, while a developer may identify new development team members from project to project, an “entirely new” team may present added risk.

Additionally, when using development team members from outside of the region, the City will consider whether assigned team members have recent local experience or have been supplemented with local professionals. This may be particularly important for design professionals and legal counsel.

In no case, may any owner/developer/applicant or any member of the development team be a suspended, debarred, or otherwise excluded party.

Identify of Interest Relationships & Costs

Applicants must disclose all identity of interest relationships/contracts and/or costs involved in a transaction, including during the development period and following completion of the project. The City reserves the right to review any such costs further to ensure they are reasonable and consistent with the costs expected from arms-length relationships.

An “Identity of Interest” (whether or not such term is capitalized) is any relationship based on family ties or financial interests between or among two or more entities involved in a project-related transaction which reasonably could give rise to a presumption that the entities may not operate at arms-length. The City will take a broad approach to defining identities of interest and expects all applicants to err on the side of disclosure. That is, if there is any question about

whether an identity of interest may exist, the relationship should be disclosed and explained to the City.

Beyond this general definition, an identity of interest relationship will be deemed to exist if:

- An entity, or any owner of any direct or indirect ownership interest in such entity, or any family member of any such owner is also an owner, through a direct or indirect ownership interest, or an officer, director, stockholder, partner, trustee, manager, or member of the counterparty; or
- Any officer, director, stockholder, partner, trustee, manager, member, principal staff, contract employee or consultant of an entity, or any family member of thereof, is an owner, through any direct or indirect ownership interest, or an officer, director, stockholder, partner, trustee, manager or member of the counterparty.

For purposes of this definition, “family member” means the spouse, parents or stepparents, children or stepchildren, grandparents or step-grandparents, grandchildren or step-grandchildren, aunts, uncles, parents-in-law, and siblings-in-law (or their children or stepchildren). It also includes any other similar relationship established by operation of law, including but limited to guardianship, adoption, foster parents, and the like.

Financial Analysis

As noted in the introduction, the City views underwriting as more than just the financial review of a project. However, a revive of the underlying financial assumptions is still a critical and core part of underwriting. In reviewing projects, as a public funder the City must to balance two somewhat competing perspectives.

Projects must be viable, that is they must have sufficient allowances for all costs to maximize the chances the project can meet or exceed its financial projections and thereby succeed in the marketplace. In other words, the project must represent a “safe” investment. However, taken to an extreme, “safe” or overly conservative projections can also result in a project that is over-subsidized and risks providing excessive returns to the owner/developer.

As a steward of very limited public funding for affordable housing, the City also needs to ensure that costs are reasonable, that they represent a “good deal” to the public, and that returns to the owner/developer are fair but not excessive. In seeking to balance these perspectives, the City has established the following review factors and principals.

Development Costs

In general, the City will review the entire project budget to all costs are reasonable yet that the budget is sufficient to complete and sustain the project. All line items, whether or not paid directly with HOME funds, must be necessary and reasonable.

The City will consider the cost of both specific line items as well as the total development cost on a per unit and per square foot basis, comparing costs to other projects from the City’s portfolio, similar projects in the region (such as those funded by TDHCA), City-data from the Building Department, and/or third-party indices such as RS Means.

Selected Development Cost Items

Acquisition – Acquisition costs must be supported by an independent third-party appraisal prepared by a state-licensed appraiser. The purchase price must be at or below the as-is market value of the property. In the event an applicant has previously purchased land prior to applying to the City, the project budget may only reflect the lesser of the actual purchase price or the current market value. Standard closing costs from the acquisition may be included.

Applicants who purchased property prior to applying to the City, or following environmental releases under NEPA but prior to closing, may not charge or include financing costs associated with interim financing, whether from third-party or related lenders.

Architectural Fees – Architectural fees cannot exceed the following:

Design services: 6% of total construction costs

Supervision/Administration: 2% of total construction costs

City Soft Costs – The development budget for each project must include an allowance for the City's internal project-related soft costs as specified in periodic RFPs issued by the City. Similar to lender due diligence or lender legal costs, the inclusion of soft costs allows the City to recoup its direct costs of underwriting, processing, closing, and monitoring the project prior to project completion. These costs will be included in the HOME loan but may be drawn directly from HUD by the City rather than via payment requests from the project owner.

Construction Interest – Any budgeted line item for construction interest must be supported by developer period cash flow projections, modeling the actual expenditure of development costs and the anticipated pay-in of equity, HOME funds, and other construction period sources. For presentation purposes, only interest from the date of initial closing through the end of the month in which the building(s) are placed in service (i.e. approved for occupancy) may be included as construction interest. Additional interest following that date and prior to the conversion to (or closing on) permanent debt must be separately itemized and modeled. In most cases, this should be included in the "lease up reserve" noted below.

Contingencies – Applicants should include a contingency (inclusive of hard and soft costs) within the minimum and maximum amounts noted below. The contingency will be measured as a percentage of hard costs (including the construction contract plus any separate contracts for off-site work but excluding contractor fees).

- New construction projects should include a contingency of least 3% and no more than 7% of hard costs;
- Acquisition/rehabilitation projects, including adaptive reuse projects, should include a contingency of at least 5% and no more than 10% of hard costs.
- The City may consider higher contingencies based on identified risk factors such as the known need for environmental remediation or poor subsurface soils.

Contractor Fees – Contractor fees are limited as a percentage of net construction costs as further identified below. Net construction costs exclude the contractor fees, any budgeted contingency, and (even if otherwise included in the construction contract) permits and builder's risk insurance.

- Contractor Profit: 6% of net construction costs

- General Requirements/General Conditions: 6% of net construction costs. General requirements include on-site supervision, temporary or construction signs, field office expenses, temporary sheds and toilets, temporary utilities, equipment rental, clean-up costs, rubbish removal, watchmen's wages, material inspection and tests, all of the builder's insurance (except builder's risk), temporary walkways, temporary fences, and other similar expenses.
- Contractor Overhead: 2% of net construction costs.

With prior approval of the City, contractor fees may vary from the limits above provided the gross contractor fees do not exceed 14% of net construction costs.

Developer Fees – Developer fees are intended to compensate a developer for the time and effort of assembling a project, overseeing the development team, and carrying a project to fruition. Developer fees are also intended to compensate for the risk inherent in the development process, including that not every potential project proves viable and that developers must necessarily advance funds for their own operating costs and various third-party predevelopment costs prior to closing (or in some cases for projects that never proceed). The City, therefore, allows the inclusion of developer fees as follows:

- Developer Fee: 15% of total development costs less a) the developer fee itself; b) organizational expenses and/or syndication fees/cost (including investor due diligence fees); and c) reserves, escrows, and capitalized start-up/operating expenses (such as working capital, marketing, etc.).
- Maximum Limit: Regardless of percentage, the maximum developer fee shall be \$1.5M.
- Combined Contractor & Developer Fees: When an identity of interest exists between the owner/developer and the general contractor, the combined total of contractor fees and developer fees cannot exceed 20% of total development cost less a) the developer fee and b) other cost elements excluded from the calculation of the developer fee itself (see above).

In some cases, developers may delegate some of its responsibilities to third-party professionals or consultants. This may include contracting specific tasks – such as construction oversight of the builder or specialized consulting related to applying for or structuring various financial incentives like LIHTC. The costs of engaging such professionals, whether they are third parties or identity of interest relationships, must be paid from (and if separately itemized will be counted against) the allowable developer fee.

Reserves – Capitalized reserves to facilitate the initial start-up and to protect the ongoing viability of the project will include the following:

- Deficit Reserve: The City anticipates that in most cases, developments with predicted deficits during the affordability period would not be funded. However, in the event a development's long-term operating proforma projects actual cash deficits during the affordability period, an operating deficit reserve must be included in the development budget in an amount sufficient, taking into account any interest on reserve balances, to fully fund all predicted deficits through the affordability period.
- Lease-Up Reserve: A lease-up reserve intended to cover initial operating deficits following the completion of construction but prior to breakeven operations may be included. Any such reserve must be based on lease-up projections/cash-flow modeling and the lease-up (or absorption) period identified in the project's market study. In evaluating the

appropriateness of any lease-up reserve, the City will consider whether the development budget includes specific line items for other start-up expenses that otherwise are typically part of the ongoing operating budget for a development. This may include budgets for marketing, working capital, etc.

- **Operating Reserve:** An operating reserve equal to three (3) months of underwritten operating expenses, reserve deposits, and amortizing debt service must be included in the development budget. The operating reserve is intended as an “unexpected rainy day” fund and will only be accessible after a project has achieved stabilized occupancy.
- **Replacement Reserve:** For acquisition-rehabilitation projects, a capitalized replacement reserve must be included in the development budget. The capitalized replacement reserve should be funded at the greater of i) \$1,000 per unit; or ii) the amount determined by a capital needs assessment approved by the City.
- **Other:** The City may consider other specialized reserves as appropriate based on unique features of the project and/or requirements of other funding sources. These may include special security reserves, supportive service reserves, or transition reserves for projects with expiring project-based rental assistance contracts, etc.

Operating Revenues

The City will review an applicant’s projection of operating revenues to ensure they are reasonable and achievable both initially and through the affordability period. In evaluating operating revenues, the City will take into account the i) project-specific market study; ii) actual operating performance from other comparable projects including those from the applicant’s existing portfolio of real-estate owned; iii) data available from comparable projects in the City’s portfolio; and/or iv) information available from actual performance within TDHCA’s portfolio.

For purposes of the long-term operating proforma, operating revenue projections cannot be increased by more than 2% per year. The City reserves the right to “stress” proposals for underwriting purposes to assess the impact of lower inflationary increases, such as modeling the impact of only 1% rent increases for the first three to five years of a project’s affordability period.

Rents

All rents should be supported by the market study. Including the utility allowance, the gross rent for any income/rent restricted unit should demonstrate at least a 15% “discount” compared to comparable “market rate” units.

Additionally, to hedge against flat or declining rents to the owner in the event that income limits (and therefore rents) do not increase in a given year (particularly between commitment and lease-up), gross rents should demonstrate at least a 2.5% discount from the regulatory limit imposed on any income/rent restricted units by HOME, LIHTC, or other similar sources. As an alternative to setting rents below the applicable regulatory limit, the City will consider increasing the allowance for vacancy by 2.5%.

Non-Rental Revenue

Non-rental revenue must be fully explained and conservatively estimates. In general, no more than \$60-\$240 per-unit, per-year may be budgeted in “other revenue” including that from tenants fees (such as fees for late payment of rent, nonsufficient funds, garage/carport upgrades, pet fees, etc. or interest on operating account balances). Exceptions may be considered by the City based on the operating history of an acquisition/rehabilitation project or normalized operations are other comparable properties in the same market area.

Vacancy

Total economic vacancy includes physical vacancy (a unit is unrented), bad debt (a unit is occupied but the tenant is not paying rent), concessions (a unit has been leased for less than the budgeted rent), and “loss to lease” (an pre-existing lease is less than the most recently approved annual rent but will be adjusted upward at renewal).

In all cases, based on the market study or other data available to the City, the City reserves the right to require higher vacancy projections. This may include higher vacancy rates for small developments (e.g. less than 20 unit) where standard percentage assumptions about vacancy may not be appropriate. Minimum allowances for vacancy must include:

- 5% for projects where all units are supported by a project-based rental assistance contract with a term equal to or in excess of the affordability period (e.g. project based Section 8); or
- 7% for all other projects.

As noted above, the minimum vacancy rate will be increased by 2.5% if budgeted gross rents are at the applicable regulatory maximums.

Operating Costs

The City will review an applicant’s projection of operating expenses to ensure they are reasonable and adequate to sustain ongoing operations of the project through the affordability period. In evaluating a proposed operating budget, the City will compare projects costs to i) actual operating expenses of comparable projects in the applicant’s existing portfolio of real-estate owned (insomuch as possible, comparable projects will be in the same vicinity and operated by the same management company); ii) actual operating expenses of other comparable projects in the City’s portfolio; iii) data available on the operating costs of affordable housing in the TDHCA portfolio; and/or iv) minimum per-unit, per-year allowances established by the City through periodic RFPs for rental housing.

For purposes of the long-term operating proforma, operating expenses, including reserve deposits, will be inflated at no less than 3% per year. The City reserves the right to “stress” proposals for underwriting purposes to assess the impact of higher operating cost factors, such as modeling the impact of higher inflation rates in general or for specific items of cost (for example, assessing the impact of high rates of increase for insurance or development paid utility costs).

Selected Items of Operating Cost

City HOME Monitoring Fee – Pursuant to 24 CFR 92.214(b)(1)(i), the City assesses an annual HOME monitoring fee. The operating budget for each project must include an allowance for the City’s annual HOME Monitoring Fee as specified in periodic RFPs issued by the City.

Property Management Fees – An allowance of 5% of effective gross income (i.e. gross rent potential plus other revenues minus actual vacancy, bad debt, concessions, etc.) should be included. In the event a lower management fee is proposed, the City will consider using a fee as low as 3% provided the proposed management company is acceptable to the City and has agreed in writing to the lower fee.

Property Taxes – Applicants must provide detailed explanations of property tax projections and, as applicable, provide documentation that any anticipated partial or full exemptions or payments in lieu of taxes (PILOT) have been approved by the appropriate tax assessor. In the absence of

a tax exemption or PILOT, the operating budget must provide for a tax rate equal to 1.25% of the market value of the property or the City, at its option, may require confirmation from the tax assessor of the applicant's projection.

Replacement Reserve Deposits – The operating budget must include minimum replacement reserve deposits of:

- New Construction Family: \$300 per-unit, per-year
- New Construction Senior: \$250 per-unit, per-year
- Rehabilitation: The greater of i) \$300 per-unit, per-year; or ii) a higher amount established by a CNA approved by the City.

Note: The City will reserve the right within a project's transactional documents to require periodic CNAs for all projects and to adjust ongoing replacement reserve deposits base on the results of the CNA to ensure that the replacement reserve is sufficient to address all anticipated needs for the project's affordability period of the term of the City's loan, whichever is longer.

Items Payable only from Surplus Cash

Certain costs, sometimes identified by project owners as "operating costs" cannot be included in the operating budget and will only be payable from surplus cash (aka cash flow). These include:

- Incentive Management Fees payable in addition to the allowable management fees noted above, whether paid to related party or independent third-party management fees.
- Asset Management Fees payable to any investor, general or limited partner, or member of the ownership entity.
- Deferred Developer Fees
- Operating Deficit Loan Payments made to any related party including any investor, general or limited partner, or members of the ownership entity.
- Other payments to investors, general or limited partners, or members of the ownership entity, however characterized, including but not limited to negative adjustors, yield maintenance fees, etc.

Ongoing Economic Viability

The City will review the ongoing economic viability of all projects, taking into account long-term projections of revenue and expenses. Projects must demonstrate they can be expected to remain viable for at least the affordability period, taking into account trending assumptions noted above, as well as other any other changes in operating revenues or expenses that can reasonably be anticipated based on other information available to the City or other project funders. In particular, the City will review the debt coverage ratio and operating margin as outlined below.

Debt Coverage Ratio

Projects must demonstrate a minimum debt coverage ratio (DCR) of 1.25 (Net Operating Income divided by amortizing debt service) throughout the affordability period. In some cases, for projects with relatively small levels of mortgage debt, this may require a higher initial DCR to ensure that the DCR in later years remains at or above the appropriate level.

Operating Margin

In addition to considering the DCR, the City will review the operating margin (surplus cash divided by total operating expenses and amortizing debt service). The operating margin must remain at or above 5% for the period of affordability.

Other Funding Sources

Prior to committing funds, all other funding sources necessary for a project must be identified, committed in writing, and consistent with both the City's underwriting requirements and the affordability restrictions of the HOME program. In general, developers must make all reasonable efforts to maximize the availability of other funding sources, including conventional mortgage debt and tax credit equity (as applicable), within commercially available and reasonable terms.

Additionally, restrictions or limitations imposed by other funding sources cannot conflict with any applicable HOME requirements and cannot, in the discretion of the City, create undue risk to the City.

Senior Mortgage Debt

Any amortizing mortgage debt that will be senior to the City's HOME loan must:

- Provide fixed-rate financing;
- Have a term equal to or in excess of the HOME affordability period. The affordability period will generally be 15 years beyond the date of "project completion" as defined in 24 CFR 92.2 for acquisition/rehabilitation projects and 20 years for new construction projects. In practice, the date of "project completion" will not be the same as "placed in service" date for tax purposes but for most projects will occur prior to permanent loan conversion following property stabilization. Insomuch as possible, the first mortgage should have the longest amortization period available but cannot balloon prior to the expiration of the affordability period; and
- Allow the City's HOME covenant running with the land (i.e. the deed restrictions imposing the HOME affordability requirements) to be recorded senior to all other financing documents such that the HOME covenant is not extinguished in the case of foreclosure by a senior lender. Note the City HOME loan itself will be junior to conventional amortizing loans; only the deed restrictions must be senior.

Tax Credit Equity

Projections of tax credit equity must be documented by letters of intent or other similar offers to participate in the transaction by the proposed tax credit investor. Prior to committing funds, the applicant must provide evidence it has received a tax credit reservation from TDHCA and provide the proposed limited partnership agreement or operating agreement, as applicable, documenting the terms of the equity investment.

The City will review proposed equity pricing against information from other projects in the region to assess whether the pricing and terms are reasonable.

Deferred Developer Fee

It is common for projects to include deferred developer fees as a financing source. The City will generally require:

- That projections of surplus cash available (after any cash-flow contingent payment due the City) be sufficient to repay the deferred fee within 15 years (notwithstanding other "waterfall" provisions in the partnership or operating agreement, the City will assume that all surplus cash distributions will be credited against the developer fee);
- That following the initial application to the City, the level of deferred developer fee will remain fixed (in nominal dollar terms) in the event City underwriting identifies cost

reductions, increases in other funding sources, or other changes that result in a net reduction of the “gap” to be filled with HOME funds; and

- That any net savings (or increased funding sources including but not limited to upward adjusters for tax credit equity) at project completion and cost certification will be used in equal parts to reduce the deferred developer fee and the City’s permanent HOME loan. In the event savings are sufficient to eliminate the deferred fee in this manner, any remaining net savings will be used to further reduce the City’s HOME loan, or in the sole discretion of the City, to increase the operating reserve.

Exceptions and Interpretation

The City has developed these guidelines for several reasons. Not only are they required by HUD as part of the City’s role as a HOME PJ, but more generally they are intended to provide clarity to applicants on what the City expects and transparency about the “rules of the road.” However, the City recognizes that it cannot pre-emptively identify every possible special circumstance that may warrant an exception to its general requirements, nor can it identify every possible “loophole” whereby a creative presentation of costs or other projections might subvert the general need to balancing of viability and reasonable returns, risk to the City and public benefit.

Consequently, the City reserves the right to waive specific underwriting criteria for specific projects when, in its judgement, the purposes of the program can be better achieved without taking on undue risk. When waiving any given requirement, the City may impose additional special conditions or business terms that are not otherwise typically applied to all projects.

For administrative ease, the City may also align its underwriting standards with those required by other public funders involved in a given transaction, particularly if those standards are more restrictive or conservative than the City’s. However, the City retains the right, in its sole discretion, to decide whether to accept alternative standards.

The City also reserves the right to reject any element of a transaction that, despite not being specifically prohibited, was not anticipated by these guidelines of such an element or business term otherwise creates unacceptable risks, excessive returns to the owner/developer, or otherwise undermines the public purposes of the City’s program.

Inasmuch as is reasonable, the City will update and clarify these guidelines over time to account for exceptions, waivers, or additional restrictions it imposes.

APPENDIX 3 UNIVERSAL DESIGN GUIDELINES

This portion of the manual outlines the City's policy on Universal Design and the minimum design criteria for new affordable housing projects.

In order to ensure the sustainability of the projects supported by CDBG and HOME funds, the City has established guidelines in relation to Universal Design. In addition, the City wants to ensure that newly constructed units are compatible with existing neighborhoods.

Universal Design

This comprehensive housing policy creates a Universal Design construction requirements for all new single-family homes, duplexes, and triplexes using financial assistance from the City.

The goal of "Universal Design" is to ensure that housing can accommodate the needs of people with a wide range of abilities, including children, aging populations and persons with disabilities. Consequently, all new construction housing projects using City of Dallas CDBG and/or HOME funds will meet all the following criteria:

- At least one entrance shall have 36-inch door and be on an accessible route.
- All interior doors shall be no less than 32-inches wide; except for a door that provides access to a closet of fewer than 15 square feet in area. Each hallway shall have a width of at least 36-inches wide and shall be level and ramped or beveled changes at each door threshold.
- All bathrooms shall have the walls reinforced around the toilet, bathtub and shower; for future installation of grab bars.
- Each electrical panel, light switch or thermostat shall be mounted no higher than 48 inches above the floor. Each electrical plug or other receptacle shall be at least 15 inches from the finished floor.
- An electrical panel located outside the dwelling unit must be between 18 inches and 42 inches above the ground and served by an accessible route.
- All hardware installed to open/close doors and operate plumbing fixtures shall be lever handles.

Universal Design Waiver or Exterior Accessibility Requirements

The Director of Sustainable Development or his designee may only grant modifications or an exemption to the requirements of the Ordinance regarding full compliance with the exterior path of travel on an individual case-by-case basis. The criteria for granting a modification or exemption are as follows:

- The lots rise or falls so steeply from the street that a maximum 1:12 slope cannot be achieved without extensive grading; and
- No vehicular access to the back of the house will be available by means of an alley.
- Appeals of orders, decisions of determination made by the Director of Sustainable Development may be made to the Board of Adjustments.

Universal Design Implementation

- Clearly stamp or print "Universal Design" on plans submitted
- Clearly Identify design elements outlined in Ordinance.
- Certify that the plans comply with the requirements of the Ordinance.
- Plan checking, construction inspections and enforcement shall be accomplished by the Development Services Department in accordance with existing procedures.

Design Guidelines

All builders and developers of infill housing are strongly encouraged to incorporate the defining features of a neighborhood into newly constructed infill houses. Those defining features of older inner city neighborhoods may include: roof pitches, porches, materials, and window types. Developers must comply with any standards established by an existing neighborhood conservation district and/or approved neighborhood plans. Additionally, All projects must advance the principles and policies contained in the City of Dallas Complete Streets Design Manual. Site plans and building designs should contribute towards safe and convenient pedestrian, bicycle, transit and automobile access to the extent possible within the project site and the adjacent public right-of-way frontage.

For infill projects supported with CDBG and/or HOME funds, developers will be required to demonstrate that the neighborhood association near the land to be developed has been consulted on the design issues. Developers should obtain input and feedback from neighborhood residents and work with them to ensure that designs are compatible with existing housing and development patterns.

In extreme cases where an agreement cannot be reached between the developer and local neighborhood groups, CDBG and/or HOME funding may be pulled from the project.

Specific design guidelines may be developed for certain City sponsored projects. Historic and neighborhood conservation district requirements must also be met for all projects.

For rehabilitation projects, builders and developers are strongly encouraged to retain the defining features of older structures. This applies to multi-family and single-family projects.

APPENDIX 4

City of Dallas Income Limits and Part 5 Requirements

Per 24 CFR Part 92.203(b)(1), the City has elected to utilize the 24 CFR Part 5 definition for determining annual income which is commonly referred to as the "Section 8 Low-Income Limit". To be eligible for HOME or CDBG funds, households must have annual (gross) incomes at or below 80% of area median income, adjusted by household size and determined annually by the U.S. Department of Housing and Urban Development (HUD).

The *Technical Guide for Determining Income and Allowances for the HOME Program* should be utilized as a resource and the standard for the following determinations:

- Whose Income to Count
- Types of Income to Count
- Treatment of Assets
- Income Inclusions and Exclusions
- Verifying Income
- Comparing Annual Income to Published Income Limits
- Determining Household Size
- Source Documentation
- Timing of Income Certifications

The annual income limits are published by HUD each year at the webpage below.
<http://www.huduser.gov/portal/datasets/il/il15/index.html>

APPENDIX 5

Community Housing Development Organization (CHDO) Policy, Procedure, and Standards

WHAT IS A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)?

A CHDO (pronounced cho'doe) is a private nonprofit, community-based service organization that has significant capacity, and whose **primary** purpose is, to develop affordable housing for the community it serves. Certified CHDOs receive special designation from the City of Dallas (City). The HOME Investment Partnership (HOME) Program definition of a CHDO is found at 24 CFR Part 92.2.

WHAT SPECIAL BENEFITS ARE AVAILABLE TO CHDOs?

HOME regulations require that the City set aside **15%** of its annual HOME allocation exclusively for qualified, eligible CHDO projects. If an organization becomes a certified CHDO, it is eligible to take advantage of the HOME funds set-aside just for CHDOs, as well as financial support for a portion of its operating expenses (Operating Assistance Grants) associated with CHDO projects. The City's CHDOs also have first right of purchase on land bank lots and as a nonprofit they are eligible to purchase HB110 lots.

REGULATORY REQUIREMENTS FOR CHDO CERTIFICATION

The U.S. Department of Housing and Urban Development (HUD) has established standard criteria for organizations to be eligible to become a certified CHDO:

1. **Organized Under State/Local Law.** A nonprofit organization must show evidence in its Articles of Incorporation that it is organized under state or local law.
2. **Nonprofit Status.** The organization must be conditionally designated or have a tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c) of the Internal Revenue Code of 1986. A 501(c) certificate from the IRS must evidence the ruling.
3. **Purpose of Organization.** Among its primary purposes, the organization must have the provision of decent housing that is affordable to low- and moderate-income people. This must be evidenced by a statement in the organization's Articles of Incorporation and/or Bylaws.
4. **Board Structure.** The board of directors must be organized to contain no more than one-third representation from the public sector and a minimum of one-third representation from the low-income community.
5. **No For-Profit Control.** The organization may not be controlled by, nor receive directions from, individuals or entities seeking profit from or that will derive direct benefit from the organization.
6. **No Individual Benefit.** No part of a CHDO's net earnings (profits) may benefit any members, founders, contributors, or individuals. This requirement must also be evidenced in the organization's Articles of Incorporation.
7. **Clearly Defined Service Area.** The organization must have a clearly defined geographic service area outlined in its Articles of Incorporation and/or Bylaws. CHDOs may serve individual neighborhoods or large areas. However, while the organization may include an entire community in their service area (such as a city, town, village, county, or multi-county area), they may not include the entire state.
8. **Low-Income Advisory Process.** A formal process must be developed and implemented for low-income program beneficiaries and low-income residents of the organization's service area to advise the organization in all of its decisions regarding the design, location, development and management of affordable housing projects.
9. **Capacity/Experience.** The key staff and board of directors must have significant experience and capacity to carry out CHDO-eligible, HOME-assisted projects in the community where it intends to develop affordable housing (key staff and board of directors have successfully completed HOME-funded, CHDO-eligible projects in the past).
10. **Community Service.** A minimum of one year of relative experience serving the community(ies) where it intends to develop affordable housing must be demonstrated.

- 11. Financial Accountability Standards.** The organization must meet and adhere to the financial accountability standards as outlined in 2 CFR 200 Subpart D, "Standards for Financial and Program Management."

CITY REQUIREMENTS FOR CHDO CERTIFICATION

In addition to the regulatory requirements, the City has established additional criteria for CHDO designation. To be eligible for CHDO designation, an organization must also:

1. Maintain a record of good standing with the Texas Secretary of State's office.
2. Maintain a staffed, physical office location in the proposed service area that is open for business and accessible by potential program applicants during generally-accepted customary business hours.
3. Have established a minimum 3-year strategic business plan, which must include CHDO- related production and community involvement goals.
4. Maintain a history of no significant compliance findings on its City funded projects.

The City will accept applications from new CHDOs year-round; however, CHDO certifications will not be provided until a project is identified for funding and prior to execution of a written agreement. Please note that the criteria noted above is not intended to be all-inclusive and the City may require additional information prior to making a determination for CHDO designation. Meeting the above requirements does not guarantee that the organization will be granted CHDO designation. City reserves the right to deny or revoke CHDO designation based upon its evaluation of the nonprofit organization's performance. Designated CHDOs will be evaluated periodically for production and other benchmarks as established by City.

ORGANIZATIONAL STRUCTURE REQUIREMENTS FOR CHDO CERTIFICATION

The HOME Program establishes requirements for the organizational structure of a CHDO to ensure that the governing body of the organization is **controlled by the community it serves**. These requirements are designed to ensure that the CHDO is capable of decisions and actions that address the community's needs without undue influence from external agendas.

There are four specific requirements related to the organization's board, which must be evidenced in the organization's Articles of Incorporation and/or Bylaws. These are:

1. **Low Income Representation.** At least one-third of the organization's board must be representatives of the low-income community served by the CHDO. There are three ways a board member can meet the definition of a low-income representative:

- The person lives in a low-income neighborhood where **51%** or more of the residents are low-income. This person need not necessarily be low-income.

or

- The person is a low-income (below **80%** area median income) resident of the community.

or

- The person was elected by a low-income neighborhood organization to serve on the CHDO board. The organization must be composed primarily of residents of the low-income neighborhood and its primary purpose must be to serve the interests of the neighborhood residents. Such organizations might include block groups, neighborhood associations, and neighborhood watch groups.

The CHDO is required to certify the status of low-income representatives.

2. **Public Sector Limitations.** No more than one-third of the organization's board may be representatives of the public sector, including elected public officials, appointees of a public official, any employees of a local government or public school system, or employees of City or

the State of Texas. If a person qualifies as a low-income representative **and** a public-sector representative, their role as a public-sector representative supersedes their residency or income status. Therefore, this person counts toward the one-third public sector limitation.

3. **Low-Income Advisory Process.** Input from the low-income community is not met solely by having low-income representation on the board. The CHDO must provide a formal process for low-income program beneficiaries to advise the CHDO on design, location of sites, development and management of affordable housing. The process must be described in writing in the Articles of Incorporation and/or Bylaws. Each project undertaken by the CHDO should allow potential program beneficiaries to be involved and provide input on the entire project from project concept, design and site location to property management. One way to accomplish this requirement is to develop a project advisory committee for each project or community where a HOME assisted project will be developed. Proof of input from the low-income community will be required at the CHDO's annual recertification.
4. **For-Profit Limitations.** If a CHDO is sponsored by a for-profit entity, the for-profit may not appoint more than one-third of the board. The board members appointed by the for-profit may not appoint the remaining two-third of the board members.

EXPERIENCE, CAPACITY AND ROLES (24 C.F.R. 92.300-92.303)

To be certified as a CHDO, the HOME Program requires organizations to demonstrate sufficient experience, capacity, and financial accountability.

Experience & Capacity: A CHDO must certify to City that it has the capacity, demonstrated by having paid staff with demonstrated capacity to perform the specific role for which is it being funded. CHDO staff can be full-time or part-time and can be contract employees. The CHDO cannot count the experience of board members, donated staff, parent organization staff, or volunteers to meet the capacity requirement. The CHDO can only count capacity brought to the table by a consultant in the first year of participation. Afterward, the CHDO must demonstrate capacity based upon paid staff.

The CHDO must demonstrate experience and capacity relevant to the project and its role as owner, developer, or sponsor. If the CHDO is the owner, its staff must have the capacity to act as the owner (this may mean the ability to oversee development.) If the CHDO is the developer or sponsor, its staff must have development experience on projects of similar scope or complexity.

CHDOs must demonstrate a history of serving the community where the housing to be assisted with HOME funds will be located. HUD requires that organizations show a history of serving the community by providing:

- A statement that documents at least one year of experience serving the community.
- For newly created organizations, provide a statement that the parent organization (if applicable) has at least **1**-year experience serving the community.

CHDOs must provide resumes and/or statements of key staff members that describe their experience of successfully completed projects similar to those proposed.

CHDO SERVICE AREA

While the City does not limit the number of counties is a CHDO's service area, the very definition of a CHDO is that it be community-based. Therefore, an organization proposing a large or regional service area must demonstrate that it is taking the appropriate steps to achieve the community-based component. Some of the ways this can be achieved is by having an active community (nonpublic) representative from each of the counties on the CHDO's board of directors; establishing local advisory councils to advise the CHDO board on topics relative to the organization's activities; hosting "town hall" meetings in the proposed project areas, etc. the City will consider other methods suggested by the CHDO. CHDOs will be required to provide updates on how it is ensuring that it is active and visible in the communities included in its

service area.

The City reserves the right to limit CHDOs going into a service area where an existing CHDO is already providing service. Unless a CHDO is already approved to serve a particular territory, the City will not approve CHDOs to serve overlapping territory.

CHDO RECERTIFICATION

To ensure compliance with the HOME regulations, the recertification process will apply to CHDOs with active development projects including those under development and within the affordability period. Each CHDO will be required to submit specific information to City on an annual basis in conjunction with annual monitoring and compliance audits, including, but not limited to:

- The response to questions, numbered exhibits, and attachments listed in the City's CHDO certification application
- An updated **3-year** business plan and a description of how the low-income advisory process was implemented. If no HOME funds were used within the reporting period, a detailed description of all other affordable housing initiatives undertaken will be requested.

Recertification will be required **ANNUALLY WHEN THE CITY MONITORS THE CHDO FOR COMPLIANCE**. The CHDO must recertify as to its continued qualifications as a CHDO and its capacity to own, sponsor, or develop housing.

CHDOs that have not been allocated project funds from the HOME CHDO set-aside for **3** consecutive years will be deemed inactive. At its discretion, the City may revoke the designation of inactive CHDOs based upon a review of other non-CHDO housing activities the organization has undertaken (if any), as well as other factors deemed appropriate by City.

CHDO SET-ASIDE

The HOME requirements at 24 CFR Part 92.300 require City to set aside at least **15%** of its annual HOME allocation for projects owned, developed or sponsored by CHDOs. A certified CHDO must serve as the owner, developer or sponsor of a HOME-eligible project when using funds from the **15%** percent CHDO set-aside. A CHDO may serve in one of these roles or it may undertake projects in which it combines roles, such as being both an owner and developer. The CHDO must be certified for each type of activity it plans to undertake.

FINANCIAL ACCOUNTABILITY

CHDOs must have financial accountability standards that conform to the requirements detailed in 2 CFR 200 – Subpart D, “Standards for Financial and Program Management.” This can be evidenced by:

- A notarized statement by the president or chief financial officer of the organization.
- Certification from a certified public accountant.
- Audit completed by CPA.
- City reserves the right to request additional audited financial statements at any time.

ELIGIBLE AND INELIGIBLE USES OF HOME CHDO SET-ASIDE FUNDS

ELIGIBLE ACTIVITIES - OWNERS, SPONSORS, DEVELOPERS

Using the **15%** set-aside, a CHDO acting as an owner, sponsor, or developer may undertake any of the following activities:

- Acquisition and/or rehabilitation of rental property;
- New construction of rental housing;

- Acquisition, rehabilitation and resale of existing, vacant homebuyer property;
- New construction of homebuyer property;
- Direct financial assistance to purchasers of HOME-assisted housing developed by a CHDO with HOME CHDO set-aside funds.

Please note that to be considered a CHDO-eligible project, CHDO set-aside HOME funds must be used during the construction or rehabilitation of the project.

INELIGIBLE CHDO ACTIVITIES

Using the **15%** set-aside, a CHDO may not undertake any of the following activities:

- Rehabilitation of existing homeowners' properties;
- Tenant-based rental assistance (TBRA); or
- Down payment and/or closing cost assistance to purchasers of housing not developed with HOME CHDO set-aside funds.

ELIGIBLE ACTIVITIES – SUBRECIPIENTS

CHDOs may also act as subrecipients with non-set-aside funds by undertaking other HOME-eligible activities such as:

- Tenant-Based Rental Assistance (TBRA);
- Owner-occupied rehabilitation of single-family dwellings; and
- Down payment or closing cost assistance in the acquisition of single-family units.

OPTIONAL OPERATING EXPENSES

From time to time, funds may be available to provide general operating assistance to CHDOs receiving CHDO set-aside funds for activities. When funds are available, certified CHDOs that are administering an eligible project funded from the CHDO set-aside may be eligible to receive funds to be used for operating expenses. The regulations allow the City to allocate no more than **5%** of its HOME allocation for CHDO operating expenses (Operating Assistance Grants). However, the City reserves the right to further restrict the amount of funds an entity may receive for CHDO operating funds. This allocation does not count toward the required **15%** CHDO set-aside funds that are to be used by CHDOs for projects.

The amount of the optional Operating Assistance Grants awarded will be based on, but not limited to, the following factors:

1. The total amount of HOME funds City has available to allocate for reimbursable CHDO operating expenses;
2. The anticipated completion date and size of your current CHDO set-aside project(s); and
3. The CHDO's past performance as a CHDO developer.
4. The CHDO's capacity to complete the project in a timely manner.
5. The ability of the CHDO to retain CHDO proceeds.

The City will allocate Operating Assistance Grants on annually. Operating Assistance Grants will be provided on a fiscal year basis (October 1 – September 30) provided funds are available and the CHDO has demonstrated acceptable performance.

Although the disbursement of CHDO operating funds is not tied directly to the drawdown of the CHDO project funds, the City reserves the right to delay disbursement of operating funds if it is evident that the CHDO project is experiencing excessive delays.

City reserves the right to reduce the amount of, or not award, operating funds based upon its evaluation of the CHDO's production and overall performance.

Eligible operating expenses for which CHDOs may use operating funds include:

- Salaries, wages, benefits, and other employee compensation
- Employee education, training and travel
- Rent and utilities
- Communication costs
- Taxes and insurance
- Equipment, materials and supplies

Because the purpose of providing CHDO operating support is to nurture successful CHDOs and ensure their continued growth and success, the City will periodically evaluate the performance of any CHDO wishing to receive CHDO operating funds.

CHDO PROCUREMENT

As noted in HUD CPD Notice 97-11, CHDO organizations are not subject to the requirements of 2 CFR, Part 200 in regard to the procurement of goods and services. However, the City strongly encourages organizations to ensure that costs are reasonable and equitable. This exemption is only applicable to procurement associated with CHDO-eligible projects; CHDOs must still follow appropriate procurement procedures compliant with Part 200 for its non-CHDO projects. City may request a copy of the CHDO's procurement policy for any non-CHDO project funding proposals.

EFFECTIVE PERIOD OF CHDO CERTIFICATION

To maintain its CHDO certification, the CHDO must submit at least **30** days prior to its annual compliance and monitoring audit a copy of the most recent audit financial statements along with all required attachments listed in the City's CHDO Certification Application, which is attached to this manual as **Exhibit "A" – City CHDO Application**. If the CHDO fails to submit the recertification packet, the CHDO may no longer qualify as a CHDO. Prior to awarding any City CHDO funds, the CHDO must recertify that no changes have occurred within the agency that would disqualify the entity as a CHDO for the specific type of activity being undertaken.

HOW TO APPLY FOR CHDO CERTIFICATION

Complete the City's CHDO Certification Application including all requested attachments, documentation, and forms. The applicant has **30** days to respond to any request for additional information. If information is not received within **30** days, the CHDO certification application will be denied.

Exhibit "A" – City CHDO Application



A Community Housing Development Organization (CHDO) is a private, nonprofit, community-based service organization that has obtained staff with the capacity to develop affordable housing in the community it serves.

The following application details the requirements that nonprofit corporations must satisfy to be certified as a CHDO by the City of Dallas Housing and Neighborhood Revitalization Department (HNR). Please refer to the CHDO Manual which provides details and additional requirements HNR will use in reviewing your application submission. The CHDO Manual can be found on the City of Dallas (City) website at www.dallascityhall.com/departments/housing-neighborhood-revitalization.

Please fully complete the application and supply all requested documentation. An incomplete application package will significantly delay the consideration of your application.

We are here to help if you have any questions in completing the application. Please do not hesitate to contact Cynthia Rogers-Ellickson (214) 670-3601 for assistance.

We look forward to receiving your application!

Submit Original Certification Application Package to:



Cynthia Rogers-Ellickson
Housing Development Manager
Housing and Neighborhood
Revitalization
1500 Marilla Street, 6DN
Dallas, TX 75201



APPLICANT INFORMATION REQUIRED:

Name of Applicant Organization

Address

City

State

Postal Code

Contact Person

Position with Organization

Telephone Number

Email Address

Fax Number

Federal Tax I.D. Number

STATEMENT OF CERTIFICATION

I hereby certify that all statements I have provided in this application and in the attachments herein are true; that I am authorized to sign this application, and to make these statements, on behalf of the applicant organization; and that the organization understands that misrepresentation of any facts which lead to the improper allocation and expenditure of public funds may result in legal action against the organization for retrieval of any such funds and appropriate penalties.

Signed:

Signature

Date

Name: (typed or printed)

Title: (Executive Director)

Name of Organization

(Submit this application, with original signature, to the City of Dallas)

I. LEGAL STATUS

1. **ORGANIZED:** To receive certification, your organization must be organized under state or local laws and must provide evidence of your legal status. Organization must Maintain a record of good standing with the Texas Secretary of State's office. Which of the following have you supplied?

- Charter
 Articles of Incorporation along with confirmation from the Secretary of State; and
 Certificate of Good Standing or comparable document from the Secretary of State.

Provided in Exhibit # _____ (please specify Exhibit #)

2. **PURPOSE OF ORGANIZATION:** An organization must have among its purposes the provision of decent housing that is affordable to low and moderate-income persons'. Which of the following have you included that demonstrate compliance with this requirement?

- Charter
 By-laws signed by the board Secretary
 Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #)

3. **NO INDIVIDUAL BENEFIT:** No part of your organization's net earnings can inure to the benefit of any member, founder, contributor or individual. Which of the following have you included that demonstrate compliance with this requirement?

- Charter
 By-laws signed by the board Secretary
 Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #)

4. **SERVICE AREA:** To receive certification an organization must have a clearly defined geographic service area. The service area can be an area larger than a single neighborhood but must be an area smaller than an entire state. CHDO must maintain a staffed, physical office location in the proposed service area that is open for business and accessible by potential program applicants during generally-accepted customary business hours. If you will be serving a special population the geographic boundaries and your service area must also be defined. Which of the following have you included to demonstrate that your organization has a clearly defined geographic service area?

- Charter
 By-laws signed by the board Secretary
 Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #)

5. **TAX EXEMPT RULING:** Your organization must have a tax-exempt ruling from the Internal Revenue Service (IRS), under section 501 (c) (3), 501 (c) (4) or a Section 905 of the Internal Revenue Code of 1986. Which of the following have you provided to indicate receipt of such a ruling?

- A 501 (c) (3) Certificate Letter from the IRS
 A 501 (c) (4) Certificate Letter from the IRS
 A group exemption letter, that is dated 1986 or later, from the IRS that includes the agency seeking certification as a CHDO (acceptable for Section 905 organizations only)

Provided in Exhibit # _____ (please specify Exhibit #)

II. ORGANIZATIONAL STRUCTURE

6. **BOARD COMPOSITION:** To be certified a CHDO, an organization must structure the board of directors to consist of **at least** one-third representatives of the low-income community and no more than one-third representatives of the public sector. These provisions and examples are as follows:
- a) An applicant organization must ensure that at all times **at least** one-third of its governing board consists of representatives of the low-income community. There are three ways to meet this requirement: 1) Individuals can be residents of a low-income neighborhood in the organization's service area (but do not necessarily have to earn a low income themselves), 2) they can be low-income residents of the community, or 3) they can be appointed representatives to the board from a low-income neighborhood association. Which of the following documents have you provided that demonstrate that the one-third requirement will be maintained?
- Charter
- By-laws signed by the board Secretary
- Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #)

- b) An organization's board of directors may consist of no more than one-third representatives of the public sector. Representatives of the public sector include: 1) **elected officials** such as council members, 2) **appointed public officials** such as planning or zoning commission, regulatory or advisory boards, 3) **public employees** which include employees of public agencies or departments of the City such as fire and police, and 4) any individual who is not necessarily a public official, but has been **appointed by a public official** to serve on the organization's Board of Directors. Which of the following have you provided that demonstrate that the one-third cap on public representation will be met?
- Charter
- By-laws signed by the board Secretary
- Articles of Incorporation

(Under the HOME Program, "community" is defined as one or several neighborhoods or the city at large)

In order to verify that your current board meets both the low-income requirement and the limits on public-sector representation above, please complete the worksheet included as **Attachment B** to this application. In order to complete the worksheet, you will need to know whether the board member resides in a 'low-income' neighborhood or whether the board member qualifies as a low-income resident. An individual residing in a household earning **80%** of the area median family income or less meets the "low-income" designation. **Attachment E** provides the dollar amount of that income cap by

7. **LOW-INCOME INPUT:** To be certified a CHDO, an organization must provide a specific formal process for low-income program beneficiaries to advise the organization in all of its decisions regarding the design, location of sites, development and management of affordable housing projects. Specifically, a detailed plan for ensuring that input from low-income program beneficiaries will be solicited and integrated into the decision-making and project development processes of the organization. Which of the following has your organization provided, that detail the systems you will use to gather community involvement/input from those affected by your projects?
- By-laws signed by the board Secretary
- A Board Resolution, (written statement of operating procedures approved by the governing body).

Provided in Exhibit # _____ (please specify Exhibit #)

III. RELATIONSHIP WITH OTHER ENTITIES

RELIGIOUS ORGANIZATION SPONSORSHIP:

8. Is your nonprofit organization sponsored or created by a religious organization?

- Yes, (please continue with the following)
 No, (if no, skip to # 9)

A religious organization cannot qualify as a CHDO, but they may sponsor the creation of a wholly secular nonprofit. The developed housing must be used exclusively for secular purposes. It must also be ensured that housing will be made available to all persons, regardless of religious affiliation or belief. The religious organization can appoint an unlimited number of board members to the housing organization's board, but the religious organization cannot control the housing organization. Which of the following has been provided to demonstrate that all of these provisions will be met in the operation of the organization?

- By-laws
 Charter
 Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #) PUBLIC ENTITY SPONSORSHIP:

9. Was your organization chartered by a state or local government?

- Yes, (please continue with the following)
 No, (If no, skip to # 10)

The state or local government may not appoint more than one-third of the organization's governing body, and the board members appointed by the state or local government may not, in turn, appoint the remaining two-thirds of the board members. Which of the following has been provided that demonstrate compliance with these requirements?

- By-laws signed by the board Secretary
 Charter
 Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #) FOR-PROFIT RELATIONSHIPS:

10. Is the nonprofit organization being sponsored by or was it created by a for-profit entity?

- Yes, (please continue with the following, # 11-14)
 No, (If no, skip to # 15)

11. A CHDO cannot be controlled by, nor receive direction from individuals or entities seeking profit from the organization. Which of the following has been provided to address compliance with this requirement?

- By-laws signed by the board Secretary
 A Memorandum of Understanding (MOU)

Provided in Exhibit # _____ (please specify Exhibit #)

III. RELATIONSHIP WITH OTHER ENTITIES, Continued...

12. An organization may be sponsored or created by a for-profit entity, however; the for-profit entity's primary purpose may not include the development or management of housing. Please provide the following to evidence compliance:

- The By-laws of the for-profit entity

Provided in Exhibit # _____ (please specify Exhibit #)

13. The nonprofit organization is free to contract for goods and services from vendor(s) of its own choosing. Which of the following items has been provided to demonstrate that the nonprofit is free to do this?

- By-laws signed by the board Secretary

- Charter

- Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #)

14. If the nonprofit is sponsored by a for-profit entity, the for-profit entity may not appoint more than one-third of the organization's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members. Which of the following items has been provided to demonstrate that the nonprofit is free to do this?

- By-laws signed by the board Secretary

- Charter

- Articles of Incorporation

Provided in Exhibit # _____ (please specify Exhibit #)

IV. EXPERIENCE and CAPACITY

15. **FINANCIAL ACCOUNTABILITY:** The organization must have financial accountability standards that conform to 2 CFR 200 Subpart D, "Standards for Financial and Program Management", which is included as **Attachment A** to this application. These standards are a variation on OMB Circular A-133 but are an updated version to that circular. The organization must certify that its financial management and internal controls comply with this specific standard. Which of the following have you provided to evidence compliance with this federal requirement?

- A notarized statement by the Treasurer or Chief Financial Officer of the organization
- Certification from a Certified Public Accountant
- HUD approved audit summary

Provided in Exhibit # _____ (please specify Exhibit #)

16. **AUDIT REQUIREMENT:** The City of Dallas requires that your organization submit audited financial statements for the organization's most recent program year. The audits financials should include all components conducted, including any A-133 analysis of compliance with federal grants, analysis of internal controls, letter to the Board of Directors or management letters. If your organization does not have audited financial statements because it has been operating for less than one year, you must submit the audited financial statements of the parent or sponsor organization, along with your organization's current unaudited financial statements.

Provided in Exhibit # _____ (please specify Exhibit #)

NOTE: No nonprofit organization shall be certified as a CHDO if the organization's most recent audit reflects an outstanding finding, material weakness or other unresolved matter, which would prevent the City of Dallas from certifying the capacity of that organization to successfully develop a CHDO project.

17. **EXPERIENCE:** To become a certified CHDO, the organization must demonstrate a capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds or by contract with a consultant who has housing development experience to train appropriate key staff of the organization. The organization must have **at least** one year of experience serving the community where the housing to be assisted with HOME funds is to be located. The year of service does **not** have to be directly related to housing. Newly created organizations wishing to become CHDOs can meet the requirement if the parent (or sponsoring) organization is a nonprofit and has provided services to the community for at least one year. These are the two forms in which capacity may be documented and accepted. Which of the two have you provided to demonstrate compliance with this requirement?

- A statement signed by the Executive Director that documents at least **1** year of experience serving the community prior to seeking CHDO certification plus details the type of service provided; and have paid employees or a consultant with housing development experience working on projects assisted with HOME funds **OR**,
- A statement signed by the Executive Director that documents that its parent or sponsoring organization has at least **1** year of experience serving the community prior to seeking CHDO certification plus details the type of service provided; and have paid employees or a consultant with housing development experience working on projects assisted with HOME funds

Provided in Exhibit # _____ (please specify Exhibit #)

17a. **3-Year Business Plan:** To be eligible for CHDO designation, an organization must also have established a minimum 3-year strategic business plan, which must include CHDO- related production and community involvement goals.

Provided in Exhibit # _____ (please specify Exhibit #)

18. **PROJECT DETAIL:** As a next step toward assessing your organization’s capacity, please provide the following information about the type of project(s) your organization is currently developing or expects to develop in the next 6 months:

NUMBER OF UNITS IN FIRST PROJECT: _

BUILDING TYPE:	EXPECTED USE:	CONCENTRATION:	CONSTRUCTION ACTIVITY
<input type="checkbox"/> Single Family buildings	<input type="checkbox"/> Rental	<input type="checkbox"/> Single Site	<input type="checkbox"/> Acquisition
<input type="checkbox"/> Multi-family buildings	<input type="checkbox"/> Homeownership	<input type="checkbox"/> Scattered Site	<input type="checkbox"/> New Construction
			<input type="checkbox"/> Rehabilitation
FOR RENTAL ONLY:		FOR HOMEOWNERSHIP ONLY:	
<input type="checkbox"/> CHDO will do Property Management		<input type="checkbox"/> CHDO will do Homeownership Counseling	
<input type="checkbox"/> CHDO will contract out for Property Management		<input type="checkbox"/> CHDO will work with established Homeownership Counseling or replace homeowners	

Additional comments about the project?

19. **STAFF AND CAPACITY:** To be certified as a CHDO, the organization must have paid staff *. HUD defines CHDO staff as paid employees who are responsible for the day-to-day operations of the CHDO; this does not include volunteers, board members or consultants. Additionally, the organization must demonstrate the capacity of its key staff to carry out the activities it is planning to undertake. Specifically, the key staff who will be responsible for the project must have successfully completed projects **similar to those the organization expects to undertake**. Please submit the following to evidence staff capacity:

- Resumes of key staff members who have successfully completed projects similar to that being proposed, (include project descriptions of relevant completed projects)

Provided in Exhibit # _____ (please specify Exhibit #)

** HUD’s Definition of a paid employee is a person whose salary, payroll taxes, and unemployment insurance are paid by the organization and from whom the organization withholds payroll and income taxes. Receipt of a W-2 is sufficient evidence that an individual is a ‘paid employee’. The employee must be paid by the CHDO and, therefore cannot be contracted through, shared with, or cost-allocated through another entity. Employees of a for-profit organization that created a CHDO cannot also be employees of that CHDO.*

Please submit a roster of the organizations current board composition and their positions on the board.

Please describe the organization's current staffing by completing Attachment C

PLEASE REVIEW THE FOLLOWING CHECKLIST TO BE SURE YOUR APPLICATION SUBMISSION INCLUDES

ALL OF THE ITEMS LISTED BELOW:

- All questions have been answered, exhibit numbers indicated, and the Executive Director has signed the certification statement on page one.
- Attachment B, Board information has been completed for every board member and is enclosed.
- Attachment C, Staff information has been completed for every staff person and is enclosed.
- All exhibits referenced in the application are numbered and enclosed.

Thanks very much for applying for CHDO Certification with the City of Dallas's Housing and Neighborhood Revitalization Department. We will work diligently to provide you with a quick response to your application.

ATTACHMENT A TO CHDO CERTIFICATION APPLICATION
HUD—Required Standards for Financial Management and Internal Controls

Code of Federal Regulations, Title 2, Volume 200, Parts 302 and 303

Revised as of December 19, 2014

From the U.S. Government Printing Office via GPO Access

[CITE: 2CFR200.302, 2CFR200.303], Page 107-108

TITLE 2-- GRANTS AND AGREEMENTS

Subpart D--Post Federal Award Requirements

Sec. 200.302-- **Financial management.**

- (a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also §200.450 Lobbying.
- (b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.333 Retention requirements for records, 200.334 Requests for transfer of records, 200.335 Methods for collection, transmission and storage of information, 200.336 Access to records, and 200.337 Restrictions on public access to records):
 - (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
 - (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §200.327 Financial reporting and 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.
 - (3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
 - (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See §200.303 Internal controls.
 - (5) Comparison of expenditures with budget amounts for each Federal award.
- (6) Written procedures to implement the requirements of §200.305 Payment.
- (7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

ATTACHMENT A TO CHDO CERTIFICATION APPLICATION
HUD–Required Standards for Financial Management and Internal Controls

Code of Federal Regulations, Title 2, Volume 200, Parts 302 and 303

Revised as of April 1, 2000

From the U.S. Government Printing Office via GPO Access

[CITE: 2CFR200.302, 2CFR200.303], Page 107-108

TITLE 2-- GRANTS AND AGREEMENTS

Subpart D--Post Federal Award Requirements

Sec. 200.303-- **Internal controls.**

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- (b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity’s compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

ATTACHMENT B - BOARD MEMBER REQUIREMENTS

Org Name Here:

BOARD MEMBER INFORMATION: PLEASE CHECK THE APPROPRIATE BOX BELOW:

1

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City								
State			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:			Additional Comment:					
Position:								

2

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City								
State			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:			Additional Comment:					
Position:								

3

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City								
State			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:			Additional Comment:					
Position:								

4

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City								
State			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:			Additional Comment:					
Position:								

180704

ATTACHMENT B - BOARD MEMBER REQUIREMENTS

Org Name Here:

BOARD MEMBER INFORMATION:

PLEASE CHECK THE APPROPRIATE BOX BELOW:

5

Name:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.	
Board Position:									
Address:									
City:									
State:	Yes								Included
Zip	Phone:	No							N/A
Place of Employment:	Additional Comment:								
Position:									

6

Name:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.	
Board Position:									
Address:									
City:									
State:	Yes								Included
Zip	Phone:	No							N/A
Place of Employment:	Additional Comment:								
Position:									

7

Name:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.	
Board Position:									
Address:									
City:									
State:	Yes								Included
Zip	Phone:	No							N/A
Place of Employment:	Additional Comment:								
Position:									

8

Name:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.	
Board Position:									
Address:									
City:									
State:	Yes								Included
Zip	Phone:	No							N/A
Place of Employment:	Additional Comment:								
Position:									

180704

ATTACHMENT B - BOARD MEMBER REQUIREMENTS

Org Name Here:

BOARD MEMBER INFORMATION:

PLEASE CHECK THE APPROPRIATE BOX BELOW:

5

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City:								
State:			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:	Additional Comment:							
Position:								

6

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City:								
State:			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:	Additional Comment:							
Position:								

7

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City:								
State:			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:	Additional Comment:							
Position:								

8

Name:								* NOTE: If a low-income resident, provide a signed statement from the individual confirming that their income is below 80% MFI for their family size.
Board Position:			Elected or appointed Public Official?	Public Employee?	* Low-income resident of the community?	Resident of the low-income neighborhood in service area?	Elected rep of low-income neighborhood organization?	
Address:								
City:								
State:			Yes					Included
Zip	Phone:		No					N/A
Place of Employment:	Additional Comment:							
Position:								

180704

ATTACHMENT C

Staff Member Information

(Please make additional copies as needed to include *all* staff members)

PLEASE NOTE: A paid employee is a person whose salary, payroll taxes, and unemployment insurance are paid by the organization and from whom the organization withholds payroll and income taxes. Receipt of a W-2 is sufficient evidence that an individual is a 'paid employee'. The employee must be paid by the CHDO and, therefore cannot be contracted through, shared with, or cost-allocated through another entity. Employees of a for-profit organization that created a CHDO cannot also be employees of that CHDO.

STAFF INFORMATION:

Name:		Please indicate if this position is:
Title:		
Position:		
Hours of work:		
Duties and Responsibilities		
		<input type="checkbox"/> Paid
		Unpaid
		Resume Included?
		Yes
		No (Required)

Name:		Please indicate if this position is:
Title:		
Position:		
Hours of work:		
Duties & Responsibilities		
		Paid
		Unpaid
		Resume Included?
		Yes
		No (Required)

Name:		Please indicate if this position is:
Title:		
Position:		
Hours of work:		
Duties & Responsibilities		
		Paid
		Unpaid
		Resume Included?
		Yes
		No (Required)

City of Dallas
Community Housing Development Organization
CERTIFICATION REQUIREMENTS

To be certified as a Community Housing Development Organization (CHDO), an organization must meet the minimum certification criteria as required by the U.S. Department of Housing and Urban Development. Additionally, the organization must comply with the following policies in order to receive CHDO certification from the Housing and Neighborhood Revitalization Department (HNR).

NO DISTRIBUTIONS

An applicant organization's charter or the articles of incorporation must specify that no net earnings of the corporation can inure to the benefit of any member, founder, contributor or individual. All net income must be reinvested in the projects developed by the organization or in subsequent affordable housing projects.

BOARD COMPENSATION

Board members may receive a reasonable fixed sum and expenses for each board meeting he/she attends. However, board members cannot receive a salary for their service as a board member. For HNR staff to verify the reasonableness of compensation, CHDO applicants are required to submit all financial statements and, upon request, any other documents necessary for HNR to verify the amount of compensation provided to board members and the services for which the sum was paid.

SPONSORSHIP OR CREATION BY A RELIGIOUS ORGANIZATION

A religious organization cannot become a CHDO but can create a wholly secular nonprofit housing organization. The sponsoring organization can appoint an unlimited number of board members to the board of the housing organization. Beyond that, however, the housing organization cannot be controlled by the religiously-based sponsor organization. That is, the housing organization must be free to select its projects, to procure its goods, services and financing, and to otherwise operate the organization without influence or intervention by the religiously based sponsor. Additionally, the housing developed by the housing organization must be made available to all persons, regardless of religious belief or affiliation. The by-laws of the housing organization must include language that ensures compliance with all of the above requirements.

REPRESENTATIONS AND WARRANTIES

Any applicant who submits fabricated information, documentation or signatures as part of or along with its CHDO application, or any applicant who misrepresents any aspect of the board, staff or organizational accomplishments, experience or expertise shall be disqualified from the CHDO certification process for a period of 1 year. The 1-year disqualification period will begin at the time the misrepresentation is made by the HNR Department and is reported in writing by HNR staff to the applicant organization. If an applicant believes the HNR determination of misrepresentation is in error, the applicant organization may appeal the decision in writing to the Director of the Housing and Neighborhood Revitalization.

AUDIT

The Housing and Neighborhood Revitalization Department requires that your organization submit audited financial statements for the organization's most recent program year. If your organization does not have audited financial statements because it has been operating for less than one year, you must submit the audited financial statements of the parent or sponsor organization, along with your organization's current unaudited financial statements. No nonprofit organization shall be certified as a CHDO if the organization's most recent audit has an outstanding finding, material weakness or other unresolved matter which would prevent the Housing and Neighborhood Revitalization from certifying the capacity of that organization to successfully develop a CHDO project. The audit will also be used in assessing the organization's financial capacity for executing the affordable housing activities it intends to pursue.

VERIFICATION OF COMPLIANCE WITH BYLAWS

As part of the certification process, the Housing and Neighborhood Revitalization may do all necessary due diligence to verify that the operations of an applicant organization are being conducted in keeping with the by-laws submitted in the CHDO Certification application.



City of Dallas, Housing and Neighborhood Revitalization Department

1500 Marilla Street, Dallas, Texas 75201

(214) 670-5988 Fax (214) 670-0156

www.dallascityhall.com/departments/housing-neighborhood-revitalization

ATTACHMENT E TO CHDO CERTIFICATION APPLICATION

HUD Income Limits by Household Size Effective Date: April 14, 2017

FY 2017 Area Median Family Income Dallas, Texas

\$73,400 (4-person household)

Number of Persons in Households

Eligibility Standard	1	2	3	4	5	6	7	8	9
80%¹	\$41,100	\$47,000	\$52,850	\$58,700	\$63,400	\$68,100	\$72,800	\$77,500	\$82,200
67%	\$34,425	\$39,342	\$44,260	\$49,178	\$53,112	\$57,046	\$60,981	\$64,915	\$68,849
65%	\$33,397	\$38,168	\$42,939	\$47,710	\$51,527	\$55,344	\$59,160	\$62,977	\$66,794
60%	\$30,828	\$35,232	\$39,636	\$44,040	\$47,563	\$51,086	\$54,610	\$58,133	\$61,656
50%¹	\$25,700	\$29,400	\$33,050	\$36,700	\$39,650	\$42,600	\$45,500	\$48,450	\$51,400
30%¹	\$15,400	\$17,600	\$19,800	\$22,000	\$23,800	\$25,550	\$27,300	\$29,050	\$30,850
Size adjustment:	70%	80%	90%	100%	108%	116%	124%	132%	140%

¹Income for the 80%, 50% and 30% categories are HUD's estimated figures rounded to the nearest \$50.

CHDO Certification Application, **Attachment E**, MFI Chart

ATTACHMENT F TO CHDO CERTIFICATION APPLICATION

Community Housing Development Organization
SELF-CERTIFICATION FORM

For the purpose of determining income eligibility, I,_(print name), do hereby understand that in order to qualify as a representative of the low-income community, my total household income cannot exceed **80%** of the Median Family Income for the Dallas area as established by the Federal Government. Currently, the amounts are:

HUD Income Limits by Household Size

Effective Date: April 14, 2017

2017 Area Median Family Income for Dallas, Texas

1	2	3	4	5	6	7	8
PERSON	PERSON	PERSON	PERSON	PERSON	PERSON	PERSON	PERSON
\$41,100	\$47,000	\$52,850	\$58,700	\$63,400	\$68,100	\$72,800	\$77,500

The following is a list of all persons who are currently occupying this household:

Name Age Relationship Gross Monthly Income

(Before Taxes)

Signature

Date

WARNING: Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

FOR CITY STAFF ONLY:

Based on the information provided above, the information has been verified by HNR Staff to reflect that the person named above

DOES **DOES NOT**

qualify as a representative of the low-income community as defined by HUD.

HNR Staff Name:

Date:

CHDO Certification Application, **Attachment F**, CHDO Board Self-Certification Form

APPENDIX 6

Recapture/Resale Requirements for Homebuyer Activities

To ensure that HOME investments yield affordable housing over the long term, HOME regulations impose occupancy requirements over the length of an affordability period. If a house purchased with HOME funds is sold during the affordability period, recapture or resale provisions as per 24 CFR 92.254 shall apply to ensure the continued provision of affordable homeownership.

Definitions

Affordability Period: Occupancy restrictions for varying lengths of time for those homeowners assisted with HUD HOME funds. The affordability period affects the terms of the resale/recapture of the property if sold during the affordability period.

HOME Affordability Periods	
HOME subsidy/unit	Minimum Period of Affordability in Years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

Direct Homebuyer Subsidy: A direct subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise directly subsidized the purchase (e.g., down payment or closing cost assistance, subordinate financing, etc.).

Development subsidy: A development subsidy is the difference between the cost to develop housing and the market price. For example, the PJ might provide a \$50,000 construction loan to a developer. The appraised value after construction will be \$45,000 because of neighborhood and the market conditions. The \$5,000 difference between the \$45,000 sale price and \$50,000 construction loan is not repaid to the PJ and represents a development subsidy provided to the developer. While the subsidy does not go directly to the homebuyer, it helps make development of an affordable home feasible.

Summary of Provisions for the City of Dallas by Subsidy Type:		
Direct Homebuyer Subsidy (DHS)	DHS + Development Subsidy	Development Subsidy
Recapture provisions shall apply	Recapture provisions shall apply	Resale provisions shall apply

Net Proceeds: The sales price minus loan repayment (other than HOME funds) and closing costs.

Recapture Requirements

Pursuant to HOME regulations at 24 CFR 92.254(a)(5) each HOME-funded homebuyer unit must be subject to either resale or recapture requirements during the affordability period. The City of Dallas exclusively uses the recapture provisions as defined herein and does not intend to use resale restrictions.

The City of Dallas provides HOME-funded direct buyer assistance to income eligible buyers based on need as dictated by the City of Dallas Homebuyer Assistance Program Underwriting Guidelines.

The level of HOME assistance provided to a buyer is based on an evaluation of the buyer's individual need taking into account their specific income, debts, etc. according to the City's underwriting policies for homebuyer assistance. Depending on the level of homebuyer assistance provided, the affordability period may be five (5) years (less than \$15,000 in direct assistance), ten (10) years (\$15,000 or more but less than \$40,000 in direct assistance), or fifteen (15) years (\$40,000 or more in direct assistance). Based on the City's program design, most projects trigger a 5- or 10-year affordability period.

All buyers sign a HOME written agreement with the City outlining the affordability period and recapture provisions. HOME assistance is provided in the form of a deferred loan secured by a second-position deed of trust which is due and payable upon sale or transfer of title. In the event buyers remain in the unit beyond the end of the affordability period, the HOME loan remains outstanding until sale or transfer of title while the term of the HOME written agreement expires.

Any sale or transfer of title during the affordability period results in recapture by the City of the lesser of the:

- a) Entire amount of direct HOME assistance originally provided to the buyer (less any voluntary prepayments previously made); or
- b) Net proceeds of sale (sales price minus senior secured debt minus reasonable seller's closing costs).

When the net proceeds are inadequate to fully repay the City's HOME loan, the City accepts the net proceed as full and final payoff of the note. The City reserves the right to determine that the sales price reflects an arms-length transaction at fair market value. Receipts received as a result of a sale within the affordability period are recorded as "recaptured funds." When net sales proceeds exceed the HOME assistance, buyers retain all remaining net proceeds after repaying the HOME loan balance.

After the expiration of the affordability period, any sale or transfer requires the HOME loan balance be repaid, and the City similarly limits the payoff to the net proceeds of sale. Receipts collected after the affordability period has expired are recorded as "program income." Net proceeds in excess of the City's HOME loan balance are retained by the original homebuyer.

Resale Requirements

The City of Dallas shall require that Resale provisions be used in the event that only a Development Subsidy is used to make the home affordable (i.e. funding construction to the developer). In a project where both Development and Direct subsidies are provided, recapture provisions apply.

Resale provisions require the homeowner to sell to another low-income homebuyer. The resale requirement must ensure that the price at resale provides the original HOME-assisted owner a fair return on investment and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers as defined below:

Affordable to range of low-income homebuyers (As it relates to the Resale Provision only): That which is affordable to a family earning 80% AMI and below and that who not pay any more than 30% their gross income for PITI (Principle, Interest, Tax, and Insurance).

Fair Return on Investment (As it relates to the Resale Provision only): A Homeowner can sell the home during the affordability period according to the following chart:

Fair Return on Investment (as it relates to Resale Provision only)		
Years	Lower Range	Max Limit
Year 1-5 of Affordability Period	A Homeowner can sell the home during the affordability period for no more than 15% over DCAD's most recent appraisal value	Current (as of date of sale) Affordable Home Price asset forth in the City of Dallas Housing Policy
Year 6-15 of Affordability Period	No Cap on appreciation rate	Current (as of date of sale) Affordable Home Price asset forth in the City of Dallas Housing Policy

Homeownership projects undertaken using the resale provision shall use deed restrictions, covenants running with land, or other similar mechanisms per 92.254(a)(5)(i)(A) to ensure the resale requirements. The period of affordability specified in the mortgage will be the minimum period for the project as specified above. The period of affordability is based on the total amount of HOME funds invested in the housing.

Either recapture or resale provisions must be detailed and outlined in accordance with 24 CFR in marketing brochures, written agreements and all legal documents with homebuyer. Either recapture or resale may be used within a project, not both. Combining provisions to create "hybrids" is not allowed.

APPENDIX 7

City of Dallas Affirmative Fair Housing Marketing Policy

The Affirmative Fair Housing Marketing (AFHM) Plan is a marketing strategy or approach designed to attract renters and buyers that would be least likely to apply to assisted multi-family or single-family developments. The City of Dallas requires that all recipients and sub-recipients of HOME, CDBG or NSP funds, for all projects resulting in five (5) or more assisted housing units, implement affirmative marketing approaches as part of the overall marketing strategy. To market affirmatively means that a good faith effort is made to attract to a project those minority or majority groups who are least likely to apply or are underrepresented in a neighborhood or community. Good faith efforts are recorded activities and documented outreach to those individuals identified as least likely to apply. Affirmative marketing requirements apply to all housing programs, including, but not limited to Tenant-Based Rental Assistance and Down Payment Assistance Programs.

The City of Dallas is committed to affirmatively market to such groups and requires that recipients of HOME/CDBG funds to submit an AFHM Plan using HUD Form 935.2B for single-family developments and HUD Form 935.2A for multi-family developments, prior to expending any funds on a project.

In developing an Affirmative Marketing Plan, the recipient/managing agent shall abide by the following:

I. Regulations

HOME: The recipient/managing agent shall adopt the affirmative marketing procedures and requirements as specified in the HOME Final Rule 92.351 for all projects resulting in five (5) or more HOME-assisted housing units.

CDBG: The Housing and Community Development Act of 1974, as amended, requires from each federal grantee, through the Consolidated Plan certify the following:

- (1) Examine and attempt to alleviate housing discrimination with their jurisdiction;
- (2) Promote fair housing choice for all persons;
- (3) Provide opportunities for all persons to reside in any given housing development, regardless of race, color, religion, sex, disability, familial status, or national origin;
- (4) Promote housing that is accessible to and usable by persons with disabilities;
- (5) And comply with non-discrimination requirements of the Fair Housing Act.

II. Policy on Nondiscrimination and Accessibility

The recipient/managing agent shall not discriminate against any individual or family because of race, color, national origin, religion, gender, disability, familial status, sexual orientation, gender identity or expression or source of income (disability, child support, spousal support or veteran's income or voucher). Reasonable accommodations will be offered to all disabled persons who request accommodations due to disability at any time during the application, resident selection and rent up process.

III. Training

1. The recipient/managing agent shall provide property management staff with all relevant regulations and Fair Housing provisions. All property management staff shall be required to follow the procedures and policies adopted by the recipient/managing agent. In the event that

property management staff requires fair housing technical assistance, staff is to call the **City of Dallas Office of Fair Housing and Human Rights 214-670-FAIR (3247)**.

2. Regular training programs shall including marketing, outreach, data collection, reporting, and record keeping. Property management staff shall annually receive instruction regarding fair housing laws and the recipient/managing agent's Affirmative Marketing Plan.

IV. Marketing and Outreach

1. All advertising shall display the Equal Housing Opportunity logo or the phrase "Equal Housing Opportunity" and the accessibility logo when appropriate, as shown below:



2. Consistent with resident population the development is designed to serve, the marketing of the project will ensure equal access to appropriate size units for all persons in any category protected by federal, state, and local laws governing discrimination. There will be no local residency requirements nor will preference be given to local residents for the project. Special marketing outreach consideration shall be given to the following traditionally underserved populations:
 - a. African-Americans
 - b. Native Americans
 - c. Hispanics
 - d. Asians and Pacific Islanders
 - e. Disabled Persons
3. Marketing shall include the use of newspapers of general circulation in Dallas, The recipient/managing agent will place notices in newspapers, specialized publications, and newsletters to reach potential residents. Applications, notices and all publications will include a Fair Housing and Equal Opportunity Logo, and the Accessibility Logo.
4. The recipients/managing agent will contact local civic and community organizations representative of the ethnic and cultural diversity of the area in order to disseminate information about the development. Groups representing disabled and elderly individuals will be contacted. Where necessary, recipient/managing agent will publish its marketing materials in multiple languages and alternate formats as requested in order to better reach potential recipients and sub-recipients in the area with

language limitations.

V. Race and Ethnic Data Collection and Reporting

An applicant shall be given an application package containing the following: Application, Income Requirements and form HUD-27061-H "Race and Ethnic Data Reporting Form." The recipient/managing agent is required to offer each household member the opportunity to complete the form. Parents or guardians are to complete the form for children under the age of 18. Completed documents for the entire household shall be stapled together and placed in the household's file.

VI. Compliance Assessment

1. The recipient/managing agent will review the Affirmative Marketing Plan every year and update as needed to ensure compliance. The advertising sources will be included in the review to determine if past sources should be changed or expanded.
2. The recipient/managing agent will annually assess the success of affirmative marketing actions for the project. If the demographic data of the residents vary significantly from the jurisdiction's population data, advertising efforts and outreach will be targeted to underrepresented groups in an attempt to balance the residents with the demographics of the jurisdiction. The recipient/managing agent shall submit any changes to the plan to the Fair Housing Office.

VII. Record Keeping

1. The assigned recipient/managing agent shall establish and maintain an Affirmative Marketing file to hold advertisements, flyers, and other public information documents to demonstrate that the appropriate logo and language have been used. Additionally, staff shall keep records of its activities in implementing the affirmative marketing plan, including other community outreach efforts and its annual analysis.

2. Recipient/managing shall keep up-to-date records based on census data, applications, and surveys about community residents, recipients and sub-recipients, residents of the project, and records about tenant selection or rejection.
3. The recipient/managing agent shall provide City staff provide City staff access to any pertinent books, documents, papers or other records of their properties, as necessary, for determining compliance with civil rights and nondiscrimination requirements.

APPENDIX 8**Residential Anti-Displacement and Relocation Assistance Plan (RARAP)**

This Residential Anti-Displacement and Relocation Assistance Plan (RARAP) is prepared by the City of Dallas Housing & Neighborhood Revitalization Department (City) in accordance with the Housing and Community Development Act of 1974, Section 104(d) as amended and HUD regulations at 24 CFR 42.325 and is applicable to CDBG, CDBG-R, Section 108 Loan Guarantee Program, NSP and/or HOME-assisted projects.

Plan to Minimize Displacement of Low/Mod-Income Families as a Result of Any HUD Assisted Activities

Consistent with the goals and objectives of activities assisted under the Act, the City will take the following steps to minimize the direct and indirect displacement of persons from their homes:

- Coordinate code enforcement with rehabilitation and housing assistance programs.
- Support the Redevelopment and Stabilization Target Areas through this policy
- Ensure the staging of rehabilitation of apartment units to allow tenants to remain in the building/complex during and after the rehabilitation, working with empty units first.
- Ensure for the arrangement of facilities to house persons who must be relocated temporarily during rehabilitation.
- Identify and mitigate displacement resulting from intensive public investment in neighborhoods.
- Provide reasonable protections for tenants faced with conversion to a condominium or cooperative.
- Where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement.
- If feasible, allow for demolition or conversion of only dwelling units that are not occupied or vacant occupied dwelling units (especially those units which are "lower-income dwelling units" (as defined in 24 CFR 42.305).
- Target only those properties deemed essential to the need or success of the project.

Relocation Assistance to Displaced Persons

The City will ensure relocation assistance for lower-income tenants who, in connection with an activity assisted under the above-mentioned Programs, move permanently or move personal property from real property as a direct result of the demolition of any dwelling unit or the conversion of lower-income dwelling unit in accordance with the requirements of 24 CFR 42.350.

A displaced person who is not a lower-income tenant, shall be provided relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970m Section 104(d) as amended, and implementing regulations at 49 CFR Part 24.

One-for-One Replacement of Lower-Income Dwelling Units

The City will ensure replacement of all occupied and vacant occupied lower-income dwelling units demolished or converted to use other than lower-income housing in connection with a project assisted with funds provided under the above-mentioned programs in accordance with 24 CFR 42.375.

Before entering into a contract committing the City to provide funds for a project that will directly result in demolition or conversion of lower-income dwelling units, the City will ensure publication of such project in a newspaper of general circulation and submit to HUD the following information in writing:

1. A description of the proposed assisted project;
2. The address, number of bedrooms, and location on a map of lower-income dwelling units that will be demolished or converted to a use other than as lower-income dwelling units as a result of assisted project;
3. A time schedule for the commencement and completion of the demolition or conversions;
4. To the extent known, the address, number of lower-income dwelling units by size (number of bedrooms) and location on a map of the replacement lower-income housing that has been or will be provided. NOTE: See also 24 CFR 420.75(d).
5. The source of funding and a time schedule for the provision of the replacement dwelling units;
6. The basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
7. Information demonstrating that any proposed replacement of lower-income dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units), or any proposed replacement of efficiency or single-room occupancy (SRO) units with units of a different size, is appropriate and consistent with the housing needs and priorities identified in the HUD-approved Consolidated Plan and 24 CFR 42.375(b).

To the extent that the specified location of the replacement dwelling units and other data in items 4 through 7 are not available at the time of the general submission, the general location of such dwelling units will be identified on a map and the City will ensure that the disclosure and submission requirements are completed as soon as the specific data is available.

Replacement not required Based on Unit Available

Under 24 CFR 42.375(d), the City may submit a request to HUD for a determination that the one-for-one replacement requirement does not apply based on objective data that there is an adequate supply of vacant lower-income dwelling units in standard

condition available on a non-discriminatory basis within the area.

Responsible Entity

The City is responsible for tracking the replacement of lower income dwelling units and ensuring that they are provided within the required period. This City will also ensure that relocation payments and other relocation assistance are provided to any lower-income person displaced by the demolition of any dwelling unit or the conversion of lower-income dwelling units to another use.

APPENDIX 9
Other Federal Requirements

Other Federal Requirements	Apply to Owner Occupied Rehabilitation?	Apply to Homebuyer Programs?	Applies to Rental Housing Programs?
<i>Non-Discrimination and Equal Access Rules</i>			
Fair Housing and Equal Opportunity	Yes. Must affirmatively further Fair Housing	Yes	Yes.
Affirmative Marketing	Yes.	Yes, for all projects of five or more HOME-assisted units.	Yes; for projects containing five or more Home-assisted units.
Accessibility for Disabled Persons	Accessibility features must be part of rehabilitation, if needed by owner/occupant and the overall unit is brought up to the PJ's property standard. (Note: Accessibility improvements are eligible costs.)	Yes.	Yes.
<i>Employment and Contracting Rules</i>			
Equal Opportunity Employment	Yes.	Yes.	Yes.
Section 3 Economic Opportunity		Yes, if amount of assistance exceeds \$200,000 or contract or subcontract exceeds \$100,000.	Yes, if amount of assistance exceeds \$200,000 or contract or subcontract exceeds \$100,000.
Minority/Women Business Enterprises	No.	Yes.	Yes.
Davis-Bacon & other Labor	No.	Yes, if construction contract includes 12 or more units that are HOME-assisted	Yes, if construction contract includes 12 or more units that are HOME-assisted
Conflict of interest	Yes.	Yes.	Yes.
Excluded Parties (e.g., Debarred Contractors)	Yes.	Yes	Yes.
<i>Other Federal Requirements</i>			
Environmental Reviews	Yes.	Yes	Yes.
Flood Insurance	Yes for PJs that are cities/counties. No for State programs.	Yes if city or county. No if state program	Yes for PJs that are cities/counties. No for State PJs.

Site and Neighborhood Standards	No.	No.	Yes; for rental new construction only
Lead-Based Paint	Yes for pre-1978 units	Yes for pre-1978 units.	Yes for rehabilitation of pre-1978 units. Applies to HOME and non-HOME assisted units. Requirements differ depending on whether rehabilitation work is performed.
Relocation	Yes.	Yes	Yes.

APPENDIX 10

Lead-Based Paint Requirements

This portion of the manual outlines the requirements in relation to Lead-Based Paint.

The U.S. Department of Housing and Urban Development recently adopted new regulations in relation to the treatment of Lead Based Paint in properties built before 1978 that are assisted with HUD funding. The requirements are outlined below based on the activity undertaken. To obtain a copy of the rules from HUD, go to the HUD website at: www.hug.gov/lead and download the regulation.

The section does not outline the City programs that are available to provide financial assistance in relation to lead abatement. Please note, however that any financial assistance provided by the City to address lead based paint will be in the form of a GRANT to the homeowner to developer.

Down-payment Assistance Programs:

The following are HUD's requirements See 24 CFR part 35 (subpart K):

- Distribute Lead Hazard Information Pamphlet and Disclosure to buyers of homes built prior to 1978.
- Perform Visual Assessment of all painted surfaces.
- If Visual Assessment reveals deteriorated paint, action must be taken to stabilize each deteriorated paint surface.
 - At this point, one will have to assume every component has lead since the Visual Assessment does not determine where lead is present. Safe work practices must be used by trained worker in this field. Paint stabilization works will on non-friction surfaces such as walls (interior/exterior). When dealing with friction points such as windows and doors, abatement procedures (removal, replacement, enclosure) are recommended.
- After paint stabilization, clearance must be performed by a certified Risk Assessor or Lead Inspector. HUD has established lead levels that meet clearance requirements.
- Notify the homebuyer within 15 days of results of clearance exam.

At the Visual Assessment Stage, the homebuyer *may opt* for a lead test. This will reveal the levels of lead present in the home. A lead inspection will not tell you the risk involved, but only where the lead is located. This is when a buyer may request a Risk Assessment to outline the necessary Lead Hazard Reduction methods needed to insure a lead safe residence.

Following are some options (NOT REQUIREMENTS) to consider in relation to your program design for down payment assistance programs:

- If the visual assessment reveals defective paint in which stabilization and clearance is required then this cost can be funded by the nonprofit or the homebuyer or seller.
- If visual assessment shows no deterioration of a painted surface, the homebuyer can sign a waiver stating that they are aware of the potential presence of lead paint and they choose not to address it.
- A qualified consultant should advise on any lead inspection, lead hazard screen or risk assessments.

For Rehabilitation Programs (Owner-Occupied, Homebuyer, and Rental Property Rehabilitation Programs and Historic Preservation Residential Programs):

See 24 CFR Part 35 (subpart J)

If you are implementing a rehabilitation program, HUD's requirements are a bit more stringent in relation to lead based paint. The following describes HUD's requirements:

For HUD funded rehabilitation activities, lead hazard evaluation and reduction activities must be carried out for all projects constructed before 1978.

In all case, notification must be made to the homeowner/buyer in the form of the HUD Lead Hazard Information Pamphlet and Disclosure or an acceptable alternative pamphlet.

The required evaluation and reduction activity is dependent upon the amount of HUD funding used for the project.

For cases where less than or equal to \$5,000 will be spent on the rehabilitation: *Testing:* Paint Testing of surfaces to be disturbed by the rehabilitation activities must occur.

Lead Hazard Reduction: Surfaces, which are disturbed during rehabilitation, must be repaired. Safe work practices must be used. After the rehabilitation activities are completed, clearance must be performed by a certified professional to ensure that units are safe.

For cases where \$5,001 to \$25,000 will be spent on the rehabilitation: *Testing:* Paint testing of surfaces to be disturbed by rehabilitation must occur. In addition, a risk assessment must be performed.

Lead Hazard Reduction: Interim controls must be used. This means that the friction and impact surfaces would be addressed. Interim controls include paint stabilization and cleaning. Safe work practices must be used. After the rehabilitation activities are completed, clearance must be performed by a certified professional to ensure that units are safe.

For cases where more than \$25,000 will be spent on the rehabilitation:

Testing: Paint testing of surfaces to be disturbed by rehabilitation must occur. In addition, a risk assessment must be performed.

Lead Hazard Reduction: abatement of hazards is the required approach. Abatement involves permanently removing lead based hazards, often through paint and component removal, replacement, encapsulation and enclosure. Interim controls and paint stabilization may be used on the home's exterior if it is not involved in the rehabilitation. Safe work practices must be used. After the lead hazard reduction activities are completed, clearance must be performed by a certified professional to ensure that units are safe.

Calculating the level of rehabilitation assistance:

When calculating how much HUD funding will be used on a rehabilitation project, the following costs are counted: soft costs, administrative costs, relocation costs, environmental reviews, acquisition of property, and lead hazard evaluation and reduction costs.

Lead-Based Paint Requirements

For HUD funded rehabilitation activities, lead hazard evaluation and reduction activities must be carried out for all projects constructed before 1978.

Less than or equal to \$5,000 spent on the rehabilitation:

Projects where the level of rehabilitation assistance is less than or equal to \$5,000 per unit must meet the following requirements. All work must be conducted using lead safe work practices and workers/contractors must be trained in lead safe work practices. It is presumed that painted surfaces being worked on contain lead-based paint. All disturbed paint must be repaired. Clearance is required by a State of Texas Certified Risk Assessor or Inspector if paint is disturbed. Safe work practices are NOT required when lead hazard reduction activities do not disturb (De Minimis Levels) painted surfaces that total more than 20 sq ft on exterior surfaces, 2 sq ft in any one interior room, or space or 10% of the total surface on an interior or exterior type of component.

In addition, the following notices must be provided to owners:

- Lead Hazard Information pamphlet
- Notice of Presumption and
- The Notice of Lead Hazard Reduction

Where \$5,001 to \$25,000 spent on the rehabilitation:

A risk assessment is required to identify lead hazards and identified hazards must be addressed by interim controls. A risk assessment must be conducted by a qualified professional prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation. If the risk assessment identifies lead-based paint hazards, interim controls must be implemented to address lead-based paint hazards. Interim controls must be performed by qualified professionals using safe work practices. Clearance, conducted by a State of Texas Certified Risk Assessor or Inspector, is required when lead hazard reduction activities are complete.

In addition, the following notices must be provided to owners:

- Lead Hazard Information pamphlet
- Notice of Presumption and
- The Notice of Lead Hazard Reduction

Where more than \$25,000 will be spent on the rehabilitation:

A risk assessment is required to identify hazards and any identified hazards must be abated by a qualified professional. A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation.

To address hazards identified:

- Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.

If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.

- Clearance is required when lead hazard reduction activities are complete.

In addition, the following notices must be provided to owners:

- Lead Hazard Information pamphlet
- Notice of Presumption and
- The Notice of Lead Hazard Reduction

	<\$5,000	\$5,000 to \$25,000	>\$25,000
Approach to Lead Hazard Evaluation and Reduction	Do no harm	Identify and control lead hazards	Identify and abate lead hazards
Notification	Yes	Yes	Yes
Lead Hazard Evaluation	Paint Testing	Paint Testing and Risk Assessment	Paint Testing and Risk Assessment
Lead Hazard Reduction	Repair surfaces disturbed during rehabilitation	Interim Controls	Abatement (Interim controls may be used on exterior surfaces not disturbed by rehabilitation)

APPENDIX 11
Environmental Review Policy, Procedures, and Standards

For every project, an Environmental Review must be completed in accordance with 24 CFR Part 58 prior to executing an agreement with a sub-recipient, developer or CHDO. The City has developed the "Environmental Review Policy, Procedures, and Standards" document to outline the process and requirements of completing an Environmental Review.

APPENDIX 12
SECTION 3

All projects receiving an award of HOME funds must comply with HUD's Section 3 requirements. The purpose of Section 3 is to ensure that employment, training, contracting, and other economic opportunities generated by financial assistance from HUD shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns that provide economic opportunities to low- and very low-income persons. Recipients of an award of HOME funds will be required to complete Section 3 compliance forms prior to execution of a loan agreement. Applicants requesting HOME funds must provide a written strategy demonstrating understanding of the Section 3 requirements and detailing how they will ensure that, when employment or contracting opportunities are generated because the project or activity necessitates the employment of additional persons or the award of contracts for work, preference shall be given to low- and very low-income persons or business concerns in the neighborhood. Neighborhood is defined in the HOME regulations (24 CFR Part 92, Subpart A) as "a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government."

Developers must obtain the City's approval of the Section 3 plan prior to the construction start of the project.

APPENDIX 13
MINORITY BUSINESS ENTERPRISE & WOMEN BUSINESS ENTERPRISE

Developers must maintain a MBE/WBE plan that demonstrates marketing and solicitation of MBE/WBE businesses and contractors for the construction of the project.

APPENDIX 14

Regulatory References

You may be interested in reading the actual regulations published by the U.S. Department of Housing and Urban Development for CDBG and HOME and the applicable federal requirements. A copy of the regulations may be obtained by contacting the Department of Housing and Neighborhood Revitalization or downloading the information from the HUD website at www.hud.gov.

**The regulations for CDBG are located at 24
CFR Part 570: Part 570 – Community
Development Block Grants**

Subpart A – General Provisions

Section	Title
<u>570.1</u>	Purpose and Primary Objective
<u>570.2</u>	Removed
<u>570.3</u>	Definitions
<u>570.4</u>	Allocations of Funds
<u>570.5</u>	Waivers

Subpart C – Eligible Activities

Section	Title
<u>570.200</u>	General Policies
<u>570.201</u>	Basic eligible activities
<u>570.202</u>	Eligible rehabilitation and preservation activities
<u>570.203</u>	Special economic development activities
<u>570.204</u>	Special activities by Community-Based Development Organizations (CBDO's)
<u>570.205</u>	Eligible planning, urban environmental design and policy-planning-management- capacity building activities
<u>570.206</u>	Program administration costs
<u>570.207</u>	Ineligible activities
<u>570.208</u>	Criteria for national objectives
<u>570.209</u>	Guidelines for evaluating and selecting economic development projects

**The regulations for HOME are located at 24
CFR Part 92: Home Investment
Partnerships Program**

Section	Title
n	SUBPART A - GENERAL
92.1	Overview
92.2	Definitions
92.4	Waivers and Suspensions of Requirements for Disaster Areas

SUBPART B – ALLOCATIONS FORMULA

- 92.50 Formula Allocations
- 92.60 Allocation Amounts for Insular Areas
- 92.61 Program Description
- 92.62 Review of Program Description and Certifications
- 92.63 Amendments to Program Description
- 92.64 Applicability of Requirements to Insular Areas
- 92.65 Funding Sanctions
- 92.66 Reallocations

SUBPART C – CONSORTIA; DESIGNATION AND REVOCATION OF DESIGNATION AS A PARTICIPATING JURISDICTION

- 92.101 Consortia
- 92.102 Participation Threshold Amount
- 92.103 Notification of Intent to Participate
- 92.104 Submission of a Consolidated Plan
- 92.105 Designation as a Participating Jurisdiction
- 92.106 Continuous Designation as a Participating Jurisdiction
- 92.107 Revocation of Designation as a Participating Jurisdiction

SUBPART D – SUBMISSION REQUIREMENTS

- 92.150 Submission Requirements

SUBPART E – PROGRAM REQUIREMENTS

- 92.200 Private-Public Partnership
- 92.201 Distribution of Assistance
- 92.202 Site and Neighborhood Standards
- 92.203 Income Determinations
- 92.204 Applicability of Requirements to Entities that Receive a Reallocation of HOME Funds, other than Participating Jurisdictions
- 92.205 Eligible Activities: General
- 92.206 Eligible Project Costs
- 92.207 Eligible Administrative and Planning Costs
- 92.208 Eligible Community Housing Development Organization (CHDO) Operating Expense and Capacity Building Costs
- 92.209 Tenant-Based Rental Assistance: Eligible Costs and Requirements

Lead Based Paint Regulations**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

24 CFR Parts 35, 91, 92, 200, 203, 206, 280, 291, 511, 570, 572, 573, 574, 576, 582, 583, 585,

761, 881, 882, 883, 886, 891, 901, 906, 941, 965, 968, 670, 982, 983, 1000, 1003, and 1005

Requirements for Notification, Evaluation and Reduction of Lead-Based**Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance.**

AGENCY: Office of the Secretary – Office of Lead Hazard Control, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992.

The requirements of this rule are based on the practical experience of cities, states and others who have been controlling lead-based paint hazards in low-income privately-owned housing and public housing through HUD assistance. It also reflects the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead hazards. With today's action, HUD's lead-based paint requirements for all Federal programs are now consolidated in one part of title 24 of the Code of Federal Regulations.

DATES: Effective Dates: Section 35.140 is effective on November 15, 1999. All other provisions of the rule are effective on September 15, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call (202) 755-1785, ext. 104 (this is not a toll-free number) or e-mail your inquiry to lead_regulations@hud.gov. For lead-based paint program information, contact the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room B-133, Washington, DC 20410-0500. For legal questions, contact the Office of General Counsel, Room 9262, Department of Housing and Urban Development. Hearing and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

Subpart A – Disclosure of Known Lead-Based Paint Hazards upon Sale or Lease of Residential Property.

Subpart B – General Lead-Based Paint Requirements and Definitions for All Programs

- a. Definitions
- b. Exemptions
- c. Options
- d. Notice of Evaluation and Hazard Reduction Activities

- e. Lead Hazard Information Pamphlet
- f. Use of Paint Containing Lead
- g. Prohibited Methods of Paint Removal
- h. Compliance with Other, State, Tribal, and Local Laws
- i. Minimum Requirements
- j. Waivers
- k. Prior Evaluation or Hazard Reduction
- l. Enforcement
- m. Records

Subpart C – Disposition of Residential Property Owned by Federal Agency Other Than HUD

Subpart D – Project-Based Assistance Provided by a Federal Agency Other than HUD

Subpart E - Reserved

Subpart F – HUD-Owned Single-Family

Property **Subpart G** – Multifamily

Mortgage Insurance **Subpart H** – Project-

Based Rental Assistance

Subpart I – HUD – Owned and Mortgagee-in-Possession Multifamily Property

Subpart J – Rehabilitation

Subpart K – Acquisition, Leasing, Support Services, or Operation

Subpart L - Public

Housing Programs

Subpart M – Tenant-

Based Assistance

Subpart N-Q –

Reserved

Subpart R – Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction Activities

- a. Standards
- b. Adequacy of Dust-Lead Standards
- c. Summary Notice Formats
- d. Interim Controls
- e. Standard Treatments
- f. Clearance
- g. Occupant Protection and Worksite Preparation
- h. Safe Work Practices
- i. Ongoing Lead-Based Paint Maintenance and Reevaluation

APPENDIX 15

OWNER-OCCUPIED HOUSING REHABILITATION / RECONSTRUCTION PROGRAM
GENERAL CONTRACTOR / HOMEBUILDER APPLICATION

A. COMPANY NAME: (Print) _____
 Address _____
 City, State, & Zip _____
 Office Telephone No. _____ Employer's Tax No. _____
 Cell No. _____ Fax No. _____

B. BUSINESS OWNER(S) / PRINCIPAL(S):

1. Name _____ Title _____
 Home Address _____
 City, State, & Zip _____
 Telephone No. () _____ Fax No. () _____

2. Name _____ Title _____
 Home Address _____
 City, State, & Zip _____
 Telephone No. () _____ Fax No. () _____

3. Name _____ Title _____
 Home Address _____
 City, State, & Zip _____
 Telephone No. () _____ Fax No. () _____

C. HISTORY OF COMPANY:

1. How long has your company been under the present company name? If less than 2 years, please list previous company name, if any _____

2. Are you a member of any trade or professional association? Yes _____ No _____

If yes, please indicate name and number of years as member: _____

3. Number of Employees: Office/Admin _____ Trades _____ (Give averages if number fluctuates)

4. Contractor's and/or Homebuilder's License Number _____
Where Licensed _____

5. Have you ever had your Contractor's License revoked? Yes _____ No _____
If yes, provide year revoked and justification. _____

6. Have you ever defaulted on a contract? Yes _____ No _____

7. Are you on any debarment or suspension lists or have been declared ineligible to participate in any Federal Assistance Programs? Yes _____ No _____
8. Have any members of the firm been sued within the past 2 years by sub-contractors, suppliers, customers, or other persons? Yes _____ No _____
- If yes, give details: _____
- _____
9. Do you have working capital to start a home improvement job of \$50,000.00? Yes _____
- No _____
10. How do you finance your work? _____
11. If this application is approved, how do you plan on financing these public projects?
- _____
12. If you intend on using interim financing from a lending institution to finance these public projects, please provide a commitment letter from your lending institution or other financial resources.

D. CONTRACTOR'S INFORMATION AND BACKGROUND:

1. Principal Contractor's Social Security Number: _____
2. How long have you been in business? _____

3. Describe your construction background and specific trades: _____

If you have no construction background, who in your company does? _____

4. In what areas and trades are you licensed by the City of Dallas? _____

5. Who is responsible for jobsite day-to-day activities such as: scheduling, supervision, Coordination, quality control, clients concerns and complaints, etc.?

Name: _____

Title: _____ Years w/Company _____

6. Please list full-time employees and the trades they cover? List names, trades and licenses, if any, and years with the company.

7. What kind of warranty do you provide your customers upon completion of the construction work and how long is the warranty period?

8. How long does it take you to build a new 1,900 square foot home?

9. How long does it take you to complete a FULL rehab of a 1,900 square foot home on pier and beam? _____

E. CONSTRUCTION WORK PREFERENCE:

1. What type of construction work program do you want to participate in?

- | | | |
|--|----------|---------|
| <input type="checkbox"/> Reconstruction (New construction) | Yes_____ | No_____ |
| <input type="radio"/> Single family units | Yes_____ | No_____ |
| <input type="radio"/> Multi-family developments | Yes_____ | No_____ |
|
<input type="checkbox"/> Rehabilitation (Existing homes) | Yes_____ | No_____ |
| <input type="radio"/> Single family units | Yes_____ | No_____ |
| <input type="radio"/> Multi-family developments | Yes_____ | No_____ |

E. EXPERIENCE WITH PUBLIC AGENCIES:

1. Have you participated or worked with similar federally-funded housing construction programs with other entities, i.e., Dallas Housing Authority (DHA), other housing non-profit organizations, etc.? Yes _____ No _____

If yes, please complete the following information:

(a) Agency Name _____ Phone No. _____

Address _____ City, State, and Zip _____

Type of Work _____

Contract Amount \$ _____ Units Completed _____ Date: _____

(b) Agency Name _____ Phone No. _____

Address _____ City, State, and Zip _____

Type of Work _____

Contract Amount \$ _____ Units Completed _____ Date: _____

(c) Agency Name _____ Phone No. _____

Address _____ City, State, and Zip _____

Type of Work _____

Contract Amount \$ _____ Units Completed _____ Date: _____

(d) Agency Name _____ Phone No. _____

Address _____ City, State, and Zip _____

Type of Work _____

Contract Amount \$ _____ Units Completed _____ Date: _____

G. CURRENT CONTRACT AGREEMENTS:

Presently, do you have any contracts under construction? Yes _____ No _____

If yes, provide the following information:

Project Address	Contract Amount	Client's Name	Client's Phone No.	Construction Start and Expected Completion
1				

2				
3				
4				

H. INSURANCE REQUIREMENTS (See Attachment A): If your application is approved, you will be required to provide proof of insurance as outlined in Attachment A.

I. EXPERIENCE: REHABILITATION AND/OR RECONSTRUCTION WORK DURING THE PAST YEAR:

1. Name _____ Phone No. _____

Address _____ City, State, Zip _____

Type of Work _____

Contract Amount \$ _____ Completed _____

2. Name _____ Phone No. _____

Address _____ City, State, Zip _____

Type of Work _____

Contract Amount \$ _____ Completed _____

3. Name _____ Phone No. _____

Address _____ City, State, Zip _____

Type of Work _____

Contract Amount \$ _____ Completed _____

4. Name _____ Phone No. _____
Address _____ City, State, Zip _____
Type of Work _____
Contract Amount \$ _____ Completed _____
Contract Amount \$ _____ Completed _____

J. REQUIRED DOCUMENTS:

1. The following documents must accompany this General Contractor / Homebuilder Application before this application is accepted and processed.
 - Copy of Current Picture I.D. (Texas Driver's License) of Owners
 - Copy of Current General Contractor's License
 - Copy of Current Homebuilder's License
 - Copy of commitment letter from financial resource if applicable
 - Copy of Current Certificate of Liability Insurance to include General Liability & Workers compensation and employers' Liability
 - 2007/2008 Tax Returns for Business or Owners

K. PENALTY FOR FALSE OR FRAUDULENT STATEMENT:

USC Title 18, Sec. 1001, states: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

The undersigned certifies that all information provided in this CONTRACTOR INFORMATION APPLICATION, and all information in support of said form, is true and complete to the best of the undersigned's knowledge and belief. Further, the undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the City of Dallas, Housing & Neighborhood Revitalization Department, in verification of the recitals comprising this statement of contractor's qualifications.

SIGNED this _____ day of _____, 2008.

Name of Business

By: _____
Print Name

Title: _____
Owner, Partner, President, Agent or Representative

STATE OF TEXAS §
 §

DALLAS COUNTY §

BEFORE ME, the undersigned authority, on this day personally appeared

_____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledges to me that the answers to the foregoing questions and all statements therein contained are true and correct.

GIVEN UNDER my hand and seal of office this ____ day of _____, 2008.

NOTARY PUBLIC, STATE OF TEXAS

Please Return Completed Application to:

City of Dallas
Housing & Neighborhood Revitalization Department
Attention: Inspections Manager
1500 Marilla Street,
Dallas, Texas 75201

For Questions, please contact:

EXHIBIT “A”

INSURANCE REQUIREMENTS

Prior to the commencement of the Project or any other work under this Agreement, BORROWER shall furnish an original completed Certificate(s) of Insurance or the City's Standard Certificate of Insurance form to the City's Housing & Neighborhood Revitalization Department and City's Risk Management Division, and shall be clearly labeled with Agreement name, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon. The original certificate(s) of form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement or under any of the other Loan Documents until such certificate(s) shall have been delivered to the City's Housing & Neighborhood Revitalization Department and the City's Risk Management Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

The City reserves the right to review the insurance requirements of this section during the effective period of this Agreement and of the other Loan Documents, including the term of the Note, and any extension of renewal thereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Project, this Agreement or any of the other Loan Documents, but in no instance will the City allow modification whereupon the City may incur increased risk.

A BORROWER's financial integrity is of interest to the City; therefore, subject to BORROWER's right to maintain reasonable deductibles in such amounts as are first approved in writing by the City, BORROWER shall obtain and maintain in full force and effect for the duration of this Agreement and the other Loan Documents, and any extension thereof, at BORROWER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground g. Broad form property damage, to include fire legal liability	<u>For Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
*5. Payment/Performance Bond	\$125,000.00
*6. Builder's Risk	\$125,000.00
*7. Pollution of Fuel Storage Tank	\$125,000.00
*8. Environmental	\$125,000.00
*9. Commercial Crime/Fidelity Bond, etc.	\$125,000.00
*10. Liquor Legal Liability	\$125,000.00
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

11. BORROWER must provide to City proof of continuous and renewed professional liability insurance having been obtained by all professional persons performing work or services in connection with the Project, such insurance policy having an extended discovery period of two (2) years, with such insurance policy being maintained in the same manner as set forth herein.

12. Upon completion of construction of the Project, BORROWER must carry insurance to the extent of 80% of A.C.V., fire and extended coverage policy.

13. BORROWER must provide insurance in the manner set forth herein protecting City with a standard mortgage clause naming City as loss payee for a sum equal at least to BORROWER's indebtedness to City.

BORROWER shall contractually require all third-party contractors associated with the Project to obtain the foregoing types of insurance, in the amounts and in the manner as specified herein.

The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the City, BORROWER shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

BORROWER agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name City and its officers, employees, volunteers and elected representatives as additional insureds as with respect to operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation (and professional liability, if required) policies;

- BORROWER's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City for liability arising out of operations under this agreement with the City or under any of the other Loan Documents; and
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of City.

BORROWER shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or twenty (20) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of Dallas
Housing & Neighborhood Revitalization Department
Attn: Director
1500 Marilla St.
Dallas, Texas 75201

and

City of Dallas
Risk Management Division
P.O. Box 839966
Dallas, Texas 78283-3966

If BORROWER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under any of the Loan Documents; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of BORROWER to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon BORROWER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to (a) withdraw from the Project, (b) withhold any and

all Loan monies until BORROWER demonstrates compliance with the requirements hereof, (c) declare a default under the Note and/or (d) terminate any and all Loan Documents.

Nothing herein contained shall be construed as limiting in any way the extent to which BORROWER may be held responsible for payments of damages to persons or property resulting from BORROWER's or its subcontractors' performance of the work covered hereunder or under any of the other Loan Documents.

APPENDIX 16INTERVENTIONS BY STRATEGY AREA**IMPLEMENTATION REQUIREMENTS**

	Requires an ordinance change	Authorized by Resolution	Policy Decision	Available through NEZ	Non-City Action
Accessory Dwelling Units	X				
Building Code Fee Waivers	X			X	
Community Court			X		
Code Lien Foreclosures			X		
Community Land Trust	X				
Contractor Training Program		X	X		
Development Code Fee Waivers	X				
Employer-Assisted Housing Program					X
Envision Centers					X
Expedited Processing			X		
Home Improvement Preservation Program		X	X		
Homestead Preservation Districts			X		
Housing Trust Fund		X			
Incentive Zoning/Density Bonuses	X				
Lien Releases	X				
Multi-Family Rehab Program		X			
Neighborhood Empowerment Zones		X			
Opportunity Zones					
Park Land Dedication Fees					
Property Tax Abatement		X		X	
Rental/Homeowner Maintenance Education Program	X				
Tax Increment Financing (TIF)		X			
Voucher Sublease Program		X	X		

	Proposed Type of Activities	Redevelopment Areas	Stabilization Areas	Emerging Markets	Citywide	
1	Notice of Funding Availability: New Development (for-sale and rental) or Substantial Rehabilitation	P	P	N	Y	P= Priority Y=Yes N=No
2	Preservation of owner-occupied housing: Home Improvement & Preservation Program	P	P	Y	Y	
3	Preservation of Single-Family rental housing: Home Improvement & Preservation Program	P	P	Y	Y	
4	Preservation of Multi-Family rental housing: Home Improvement & Preservation Program	P	P	Y	Y	
5	Landbanking	N	P	P	N	
6	Code Lien Foreclosures	N	P	P	N	
7	Neighborhood Empowerment Zones (unlocks development fee waivers including landscape and tree mitigation and parkland dedication fees & property tax freeze)	N	Y	N	N	
8	City's Second Mortgage Assistance Program (DHAP)	Y	Y	Y	Y	
9	Neighborhood Revitalization Strategy Area Designation	P	P	P	N	
10	Dallas Tomorrow Fund (Dept. of Code Compliance home repair fund through fee assessment)	Y	Y	Y	Y	
11	Code Academy	Y	Y	P	Y	
12	Tax Increment Reinvestment Zone designation - If one doesn't already exist	Y	Y	Y	N	
13	Create Neighborhood Association	Y	Y	P	Y	
14	Neighborhood Sweep - 2 week intensive; minor street repair, code inspections, signage, beautification projects, neighborhood plan)	Y	Y	P	N	
15	Neighborhood Beautification Projects	Y	Y	P	Y	
16	Low Income Housing Tax Credit City support - with scoring criteria	N	Y	N	Y	
17	Voucher Sublease Agreements	Y	Y	Y	Y	
18	Accessory Dwelling Units	See Citywide	Y	see Citywide	Y-opt in	
19	Incentive Zoning	P	P	N	Y	
20	Homestead Preservation District designation	N	P	N	N	
21	Community Land Trust	Y	P	N	N	
22	Tenant Based Rental Assistance Program (HILI)	-	-	-	Y	
23	Express Plan Review	P	P	N	N	

Exhibit B

NOTICE OF FUNDING AVAILABILITY

RELEASED AUGUST 30, 2018

City of Dallas, Texas
Department of Housing & Neighborhood
Revitalization

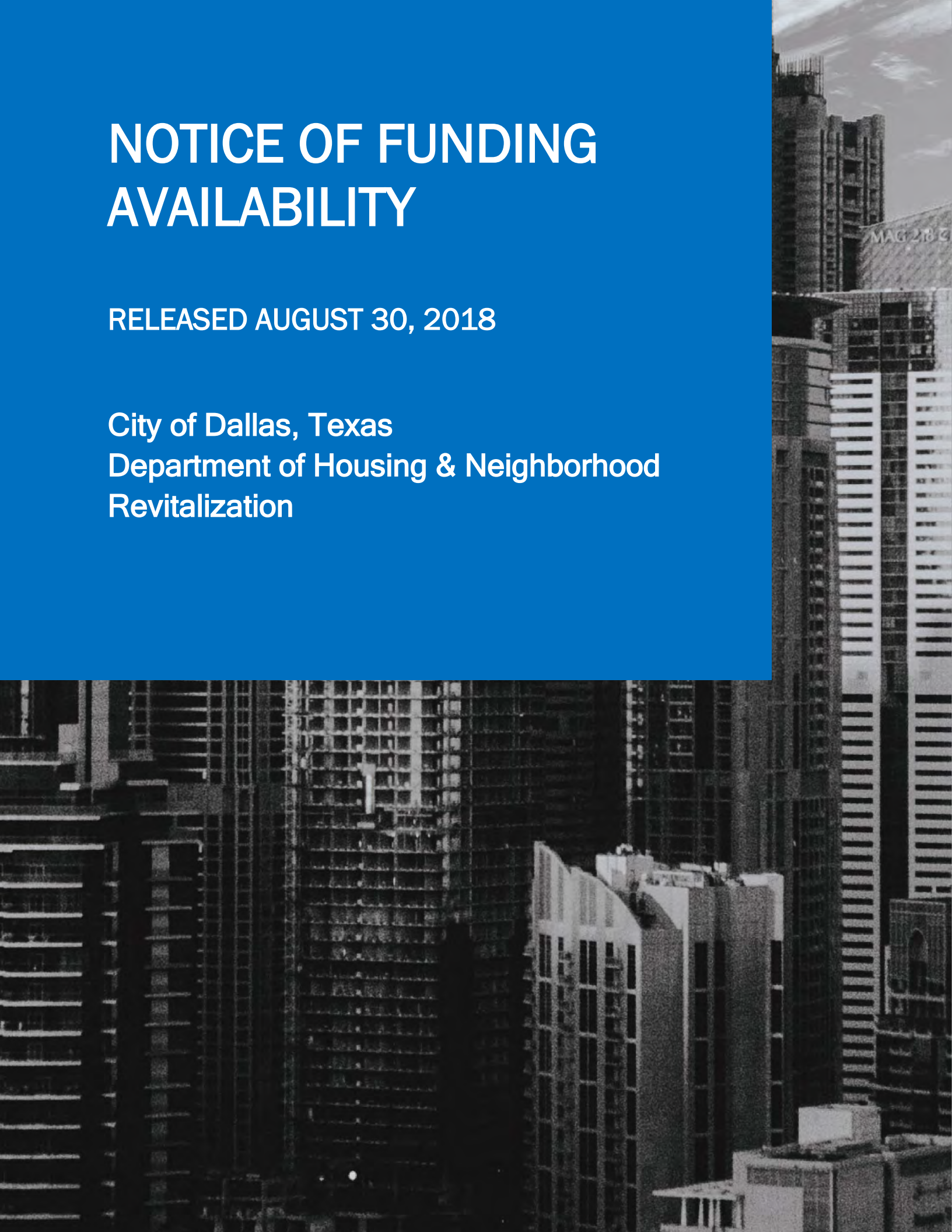


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I. *Introduction*

Executive Summary

On March 12, 2017, the Dallas City Council Housing Committee established three goals for the development of a comprehensive strategy for housing: 1) Create and maintain available and affordable housing throughout Dallas, 2) Promote greater fair housing choices, and 3) Overcome patterns of segregation and concentrations of poverty through incentives and requirements. Thereafter, the City of Dallas conducted a Market Value Analysis (MVA), which is an analytical tool used to assess the residential real estate market throughout the entire city to determine with granular detail where market strength, transition and stress exists. The City used the data gathered from the MVA to develop a Comprehensive Housing Policy that was adopted by the Dallas City Council on May 9, 2019 via Resolution 18-0704.

The primary purpose of this Notice of Funding Availability (NOFA) is to provide gap financing in the form of a repayable loan to support new developments or substantial rehabilitation of existing developments located within the City limits, with such funding prioritized in the Reinvestment Strategy Areas, as outlined in the City's Comprehensive Housing Policy and the Program Statement for the New Construction and Substantial Rehabilitation Program. All proposals for funding should assist in meeting the production goals set forth in the policy by proposing to serve households earning between 30%-120% of the Dallas Area Median Income (AMI) with the targeted income bands varying according to the market and development type.

Additionally, to effectively achieve the three comprehensive housing policy goals, a secondary purpose of this NOFA is to accept proposals from those seeking Resolutions of Support and Resolutions of No Objection for multifamily rental housing developments applying for Housing Tax Credits through the Texas Department of Housing and Community Affairs.

To review the Comprehensive Housing Policy and the Program Statement for the New Construction and Substantial Rehabilitation Program, please visit: <https://www.dallashousingpolicy.com>

To review the Market Value Analysis, please visit:

<https://www.dallascityhall.com/departments/pnv/Pages/MarketValueAnalysis.aspx>

To locate information regarding demographics, education, housing, etc. please visit:

<https://www.policymap.com/maps>

The City is working with PolicyMap to create a Dallas-specific interactive map. Once the map is live, the Department of Housing and Neighborhood Revitalization will publish the map on the department's website.

Funding Priorities

In general, this NOFA prioritizes the funding of developments that:

- based on feasibility and consistency of the proposed development schedule, can expeditiously assist the City with meeting its annual production goals,
- are located in one of the City's Reinvestment Strategy Areas (RSAs),
- serve an appropriate range of income bands from 30%-120% AMI based on market and development type
- are mixed income and include both affordable and market rate units,
- are located near amenities such as full-scale grocery stores, major employment centers, and public parks, and
- will be developed and managed by individuals or entities who have significant experience in successfully developing and managing projects that include an affordable housing component.

Type of Developments Eligible for Funding Awards

Funds may be used to:

- build new single-family houses that will be available for sale (5 or more houses),
- build new multifamily rental housing (5 or more units), or
- substantially rehabilitate existing multifamily or single-family rental housing (5 or more units).

Note: Projects located in the City's Extraterritorial Jurisdiction (ETJ) are not eligible for financial assistance under this NOFA.

Sources of Funds

Respondents should consider City development sources of funds as Gap Financing. Therefore, the proposals should demonstrate that the project(s) as presented have maximized the debt capacity of the project and that the equity in the capital stack provides a reasonable return on investment (ROI) for the project. The ROI must be supported by an independent third-party market analysis submitted along with the proposal. The City will determine, in its sole discretion, the appropriate source of City funding to allocate to projects awarded under this NOFA. If notified of an award under this NOFA, such notice does not constitute a commitment of funds; such commitment shall only occur if a project is awarded funding with City Council approval and once all funds have been appropriated by the City.

Available City Funding Sources

- HOME Investment Partnership (HOME) Funds
- Community Development Block Grant (CDBG) Funds
- Neighborhood Stabilization Program (NSP) Funds
- General Obligation (GO) Bond Funds; and
- Section 108 Funds⁵
- Housing Trust Funds
- Other

Development Sources

For projects located in specific RSAs or Reinvestment Zones:

- Waiver of Building, Inspection and Impact Fees (Neighborhood Empowerment Zone)
- TIF Project Financing (Tax Increment Reinvestment Zone)
- Qualified Opportunity Fund Financing (Opportunity Zone)

For All Projects:

- Tax Exempt Bond Financing (Dallas Housing Finance Corporation)
- Increased Development Rights (Incentive Zoning or Planned Development District)
- Acquisition of Land (Dallas Urban Land Bank Demonstration Program or **City of Dallas Surplus or Tax Resale Inventory**)

Operating Funding Sources

For projects located in specific RSAs or Reinvestment Zones:

- Ten Year Tax Abatement (Neighborhood Empowerment Zone)

For All Projects:

- Partial or Full Tax Exemption (Dallas Housing Finance Corporation Partnership)
- Landlord Incentive (Voucher Sublease Program)
- Homebuyer Financing Assistance (Dallas Homebuyer Assistance Program)
- Community Land Trust

Estimated Amount of Funding

The City estimates that \$25,000,000.00 is available to be awarded pursuant to this NOFA.

Source of Funds	Amount Available	Loan or Grant
HOME	\$8,151,742	Loan
HOME CHDO Set Aside ¹	\$1,585,000	Loan
HOME Operating Assistance Grants ²	\$125,000	Grant
CDBG	\$3,323,870	Loan
NSP	\$824,185	Loan
GO Bonds	\$5,000,000	Grant
Housing Trust Funds ³	\$5,000,000	Loan
Other ⁴	\$1,741,896	Loan

Notes:

¹As a participating jurisdiction, the City is required to commit and expend no less than **15%** of its annual HOME allocation with Community Housing Development Organizations (“CHDO”). HOME CHDO Set Aside funds can only be awarded to certified CHDOs.

²The City in its sole discretion can allocate up to **5%** of the HOME allocation each year for operating expenses for CHDOs (see 24 CFR Part 92.208). The City may provide operating funds to CHDOs based on financial need and the expectation that the organization is utilizing or will utilize the City’s HOME CHDO set aside funding within 24 months of the award.

³ A portion of funding available under the Housing Trust Fund is specifically reserved for water and wastewater infrastructure improvements.

⁴Proceeds from other housing activities.

⁵For Section 108, the City has the capacity to borrow against its CDBG grant and submit an application for funding.

II. Resolutions of Support or No Objection

City Policy

Under the adopted Comprehensive Housing Policy, the City established a process and evaluation criteria for Resolutions of Support or No Objection. Each year in December, the City will issue a Request for Applications (RFA) for Resolutions of Support or No Objection and bring forth recommendations to the Economic Development and Housing Subcommittee and City Council in February of each year. By accepting applications once per year, the City can evaluate all potential Housing Tax Credit projects at the same time. The purpose of evaluating all Housing Tax Credit projects at once is to ensure the City is not concentrating low income housing in specific areas, especially existing Racially and Ethnically Concentrated Areas of Poverty (RECAP); is prioritizing developments that offer a greater housing choice in terms of proximity to areas of opportunity; and is supporting competitive 9% Housing Tax Credit applications.

The City will evaluate and score all proposals seeking Housing Tax Credits through the Texas Department of Housing and Community Affairs via one of two methods:

- If you are a potential tax credit project that **is seeking funding** pursuant to this NOFA, you may submit a proposal and receive a score based on the NOFA scoring criteria and the established scoring criteria for Resolutions of Support or No Objection in the Comprehensive Housing Policy. Both scores will be released at the same time and the City will set aside—but not immediately award—funding for Housing Tax Credit projects that score competitively.
- If you are a potential tax credit project that **is not seeking funding**, you may either:
 - i. Choose to submit a proposal under this NOFA and receive a score based on the established scoring criteria for Resolutions of Support or No Objection in the Comprehensive Housing Policy; or
 - ii. Submit a response to the RFA issued by this Department in December.

Final decisions will not be made with respect to Resolutions of Support or No Objection until the Department receives and scores all proposals submitted in response to the December RFA. Thereafter, the Department will select which projects to recommend for such Resolutions to the City Council for approval along with any requested funding in February.

III. Disclaimer and Notice of Requirements

Disclaimer

The City reserves the right to amend or withdraw this NOFA at any time. The City reserves the right to reject and disqualify any incomplete proposals. The NOFA may be modified to account for changes in the housing industry, advancements in building and sustainable design technologies and practices, modifications to the TDHCA regulations, and changes in the City's policies, funding priorities, and goals.

Notice of Requirements

Proposers should be aware of the following requirements that are non-negotiable:

- *Complete and Timely Proposals:* To be considered for an award of funding, a Proposer must submit a complete proposal on or before the due date. The City will not review proposals that are submitted after the due date. Additionally, the City will not review any documents or attachments submitted after the due date. However, the City reserves the right to request supplementary material from Proposers.
- *Federal, State and Local Requirements:* The Dallas City Council adopted a comprehensive Housing Policy in May 2018 that contains federal, state, and local requirements that may apply to any development that is awarded funding pursuant to this NOFA. For a list of federal, state, and local requirements that may apply to your project please refer to Appendix 4. Although, Appendix 4 and the Comprehensive Housing Policy contain a list and the summaries of the federal, state, and local requirements this is **not** an exhaustive list. If selected, additional requirements will be specified in the contract and further documentation may be necessary.

IV. Timeline and Submission Requirements for Proposals

Tentative Timeline

DATE	DESCRIPTION
August 30, 2018	Release of NOFA
Advertisement	August 30, 2018
Advertisement	September 6, 2018
September 6, 2018 at 6:00 p.m. September 7, 2018 at 10:00 a.m. September 7, 2018 at 2:00 p.m.	Pre-Proposal Conferences
September 11, 2018 at 5:00 pm	Deadline for Written Comments and Questions
September 18, 2018	City Posts all Comments/Questions or Addendums
September 27, 2018	Proposals Due by 2:00 p.m.
October 7, 2018	Identify Reviewers and Panelists
October 19, 2018	Complete the Review and Underwriting of Proposals
October 26, 2018	Panel Review with Term Sheets
November 2, 2018	Issue Notice of Scoring Results to Proposers and Post Online
November 16, 2018	Complete Negotiations with Developers and Draft Contracts
November 2018	Community Development Commission Briefing
December 2018	Economic Development & Housing Committee Briefing and City Council Approval

Note: This timeline is subject to change.

Submission Requirements

Each proposal must include:

- a cover letter to the attention of Procurement Services at 1500 Marilla Street, 3FN, Dallas, Texas 75201
- all information and documents described in Appendix 1 (to the extent they are applicable to your project)

Proposals should be submitted in the following format:

- 10 paper copies of the proposal
- 1 electronic copy of the proposal on a USB drive

Questions and comments regarding this NOFA should be submitted to the following email address, loren.wilson@dallascityhall.com.

Proposals will be considered incomplete if they are missing any of the required elements, or if the project description and other information provided is insufficient to decide whether the project is eligible for a funding award. Late submissions will not be accepted or considered.

Pre-Proposal Conference

All Proposers may attend one of the Pre-Proposal Conferences that will be held at the **Bill J. Priest Institute for Economic Development**, located at **1402 Corinth Street Road, Dallas, Texas 75215**. Staff will provide an overview of the NOFA and the required elements. The Pre-proposal conference will provide Proposers the opportunity to ask questions regarding this NOFA. All questions and presentations with respect to this NOFA will be made available on the city's website.

V. Evaluation of Proposals

Two-Part Review Process

Proposals are evaluated in two stages: **Threshold Review** and **Technical Scoring**. During Threshold Review, reviewers will evaluate whether the proposal includes: all elements, eligible activities, eligible end users/beneficiaries, and whether the Proposer is an individual or entity eligible for a city contract.

Proposals that pass Threshold Review move to Technical Scoring, where reviewers will use the Evaluation Criteria set forth in this NOFA to award points to proposals based on their alignment with the Funding Priorities set forth in this NOFA. Based on the availability of funding, the City will seek to award funding to multiple proposals, in order of score. All projects that score at or above the minimum score of 100 will be eligible for a funding award.

Threshold Review

Threshold Review	Criteria
Proposal Elements	Proposal must include all required elements and must be organized in the manner set forth in Appendix 1.
Project Eligibility	Projects must meet the project eligibility requirements of this NOFA.
Project Timelines	Project timelines must provide details of project scope from project commitment through completion of construction.
End Users/Beneficiaries	Projects must contain units set aside for households earning between 30%-120% AMI for rental and 60%-120% of AMI for homeownership units and demonstrate the market absorption and capture rates for each unit type through an independent market analysis.
20-Year Proforma and Stabilization Requirements	Proforma included in proposal must contain all required elements and meet underwriting standards. Proposers must demonstrate equity in the project except that Substantial Rehabilitation projects shall demonstrate that the amount of equity is a minimum of 10% of total development costs.
Fair Housing Ordinance (Chapter 20A of City Code) Human Rights and Sexual Orientation Ordinance (Chapter 46 of City Code)	The City will deny a proposal if the Department of Fair Housing and Human Rights issued a charge against Proposer or any Project Team members for a violation of Chapter 20A or 46.
Fair Housing Review Checklist	Proposals will be evaluated to determine if project offers a greater housing choice and does not overconcentrate poverty, or further segregate neighborhoods.

Suspended and Disbarred under System for Award Management (SAMs)	The City will deny a proposal if the Proposer or any Project Team members are listed as debarred or suspended on the Federal System for Award Management.
City Code Section 2-36 (Ordinance No. 25819)	The City will deny a proposal if the Proposer or any Project Team members have not met any current obligations with the City.
Bankruptcies/Defaults, Lawsuits, and Code Violations	The City will deny a proposal if a Proposer or any Project Team members are a named defendant in a pending lawsuit related to fair housing and/or health and safety violations or if the Proposer or any Project Team members are actively seeking bankruptcy protection or under foreclosure proceedings.

Overview of Technical Scoring and Evaluation Criteria

Proposals will be evaluated based upon:

- Project Team Experience and Nonprofit Participation,
- Leveraging/Equity,
- Location of Project,
- Consistency with Comprehensive Housing Policy,
- Consistency with City's Business Inclusion and Development Plan, and
- Project and Site Factors.

Criteria	Points
Experience and Nonprofit Participation	
Project Team Experience (Partnership Entity, Project Team, General Contractor, etc.)	10
Timely Completion of Projects and Property Performance	5
Qualified Nonprofit on Project Team	5
Leveraging	
Leverage	10
Geography	
Project Located in Reinvestment Strategy Area	20
Consistency with Comprehensive Housing Policy	
Income Bands Served	10
Design Principles	5
Neighborhood/Community Group Support	5
Consistency with City's Business Inclusion and Development Plan	
Affirmative Action Plan and/or Policy	1
Ethnic Workforce Composition Report	1
Business Inclusion and Development Affidavit	2
History of M/WBE or Section 3 Business Utilization	4
Proposer and Project Team's Composition	7
Project and Site Factors	
Project Site Characteristics	5
Site Amenities	35
Homeowner and Tenant Services	5
Project Feasibility	15
Project Readiness	10
Total Points Available	155

The points listed for each category are the maximum total points that may be awarded for each category. Reviewers will evaluate proposals and award points based on the proposal's alignment with the Funding Priorities set forth in this NOFA.

Experience and Nonprofit Participation (Maximum of 20 total points)

Experience (10 points)

Proposals will be evaluated to determine if Proposer and any Project Team members, have adequate and successful experience developing housing for households earning 30% to 120% of AMI. Additionally, proposals will be evaluated to determine if the Proposer and Project Team has successful experience with Qualified Projects. Maximum points will be awarded to Proposers and Project Teams that have a minimum 10 years of collaborative, successful, relevant experience.

Timely Completion of Projects, Property Performance, and Compliance (5 points)

Proposals will be evaluated to determine if the Proposer's and Project Team's previous developments were completed in a timely manner; have been maintained in accordance with city, state and federal regulations; offer Services, if applicable; and there are no outstanding deficiencies related to inspections. Proposals, specifically, the Proposer's Certification of Financial Stability and Regulatory Compliance and related disclosures will be evaluated to determine if the Project Team's history of financial stability and regulatory compliance are satisfactory and limit risk to the City. Proposer must also demonstrate quality of materials utilized and workmanship with regard to final product. Finally, Proposer must provide 3 professional references attesting to the success of the Project Team's developments.

Qualified Nonprofit on Project Team (5 points)

To receive these points, the Project Team must include a Qualified Nonprofit Organization that has a controlling interest in the project. If ownership is a limited partnership, the Qualified Nonprofit Organization must be the Managing General Partner with greater than 50% ownership in the General Partner. If ownership is a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member with greater than 50% ownership in the Managing Member. Additionally, the nonprofit entity or its affiliate or subsidiary must be the developer or a codeveloper of the project.

Leveraging

(Maximum of 10 total points)

Leveraging (10 points)

Proposals will be evaluated to determine how the project leverages debt and equity.

Geography (Maximum of 20 total points)

Location in a Redevelopment or Stabilization Reinvestment Strategy Area (20 points)

To receive these points, the project must be located fully or partially within the actual boundaries of a Redevelopment or Stabilization area. Interactive maps of the Reinvestment Strategy Areas may be reviewed at:

<https://dallasdc.maps.arcgis.com/apps/MapSeries/index.html?appid=2aece5efc034dd89376c6138152729d> (Click on Proposed Reinvestment Areas).

Redevelopment Reinvestment Strategy Areas:

- Midtown,
- High Speed Rail,
- Wynnewood, or
- Red Bird.

Stabilization Target Areas:

- LBJ Skillman,
- Vickery Meadow,
- Casa View,
- Forest Heights / Cornerstone Heights,
- East Downtown,
- The Bottom,
- West Dallas, or
- Red Bird North.

Location in an Emerging Market Area (10 points)

To receive these points, the project must be located fully or partially within the actual boundaries of an Emerging Market Area.

Emerging Market Areas:

- Southern Gateway,
- Pleasant Grove, or
- University Hills.

***Note:** A Proposal may receive points for being located within any of the RSAs but cannot receive additional points for being located in more than one RSA.

Consistency with Comprehensive Housing Policy (Maximum of 20 total points)

Proposals will be evaluated based on the Proposer's approach to achieving the goals of the City's Comprehensive Housing Policy.

Income Bands Served (10 points)

Proposals will be evaluated to determine, whether the project serves 1) income bands presently served in the area, if such income bands are at risk of displacement or 2) new income bands that are underserved in the area. Regardless of the income bands proposed to be served, the market data/findings in the Market Feasibility Report must support the proposed population.

Design Principles (5 points)

Proposals will be evaluated to determine whether the planned design elements complement community aesthetics. Additionally, the design of the dwelling unit(s), including unit sizes, bedroom mix and accessibility features should reflect the needs of the project's target population, such as families, seniors or disabled individuals.

Neighborhood/Community Group Support (5 points)

To receive these points, the Proposal must include a letter documenting support from area residents. If the project is located within the boundaries of one or more neighborhood organizations registered with the City, the letter of support must be signed by an officer of at least one of the registered organizations. A link of registered organizations can be found at:

<https://dallasdc.maps.arcgis.com/apps/webappviewer/index.html?id=50281f8ca8df4da694e65116ac5487>:

Consistency with City's Business Inclusion and Development Plan (Maximum of 15 total points)

Proposals will be evaluated based on the Proposer's approach to achieving the goals of the City's Business Inclusion and Development Plan regarding minority- and woman-owned business enterprises as well as Section 3 businesses.

Submission of an Affirmative Action Plan and/or Policy (1 point)

To receive this point, Proposer must fully complete and submit an Affirmative Action Plan or Policy that includes a policy statement, program goals and plan regarding dissemination and internal monitoring of the policy.

Submission of an Ethnic Workforce Composition Report (1 point)

To receive this point, Proposer must fully complete and submit an Ethnic Workforce Composition Report wherein Proposer provides information regarding the ethnic composition of its employees.

Submission of Business Inclusion and Development Affidavit (2 points)

To receive these points, Proposer must fully complete and submit a Business Inclusion and Development Affidavit wherein Proposer acknowledges the City's M/WBE participation goals and agrees to provide the City of Dallas with a completed copy of all required forms provided within the Business Inclusion and Development document package, should the Project be awarded funding.

History of M/WBE or Section 3 Business Utilization (4 points)

Proposals will be evaluated to determine whether the Proposer has prior experience engaging in business relationships with M/WBE or Section 3 businesses.

Proposer and Project Team's Composition (7 points)

Proposals will be evaluated to determine whether Proposer and Project Team (combined) include a significant number of diverse M/WBE and or Section 3 businesses in meaningful roles on the Project.

Project and Site Factors (Maximum of 70 total points)

Project Site Characteristics (5 points)

Proposals will be evaluated to determine if the Proposal contains documentation that the current zoning for the land to be used for the project allows for the proposed land use, density, and development type.

Site Amenities and Resident Services (40 points max)

The following site amenity matrix shall be used in scoring the project under this category:

	1/4 mile or less	>1/4 mile and < 1/2 mile	1/2 mile and up to 1 mile
Amenity	Points	Points	Points
High Intensity Transit	5	3	1
Public Park	5	3	1
Full Scale Grocery Store	5	3	1
Community or Senior Center	5	3	1
Aging and Disability Resource Center	5	3	1
Amenity	1/2 mile or less	>1/2 mile and < 1 mile	1 mile and up to 2 miles
Qualifying Medical Clinic or Hospital	5	2	1
Amenity	20 minutes or less	>20 min. and < 40 min.	More than 40 min.
Transit time to Major Employment Center	5	2	0
Amenity	Services offered as defined in the Glossary		
Homeowner/Tenant Services	5		

Project Feasibility (15 points)

Rental Projects—Proposals will be evaluated to determine if:

- the proposed rent schedule is consistent with Texas Department of Housing and Community Affairs (“TDHCA”) rent limits on rent-restricted units and that appropriate vacancy and collection loss assumptions in the project proforma are consistent with TDHCA Housing Tax Credit (“HTC”) requirements. (5 points)
- reserves in the proforma are consistent with TDHCA HTC requirements. (5 points)
- the completed Market Feasibility Report contains conclusions supporting the applicable project proforma assumptions (5 points)

Homeownership Projects—Proposals will be evaluated to determine if:

- the completed independent third-party Market Analysis contains conclusions supporting the applicable project cash flow assumptions, including but not limited to absorption rates, unit type, value, construction schedule, sales price projections. (15 points)

Project Readiness (10 Points)

Proposals will be evaluated to determine if Proposer has 1) secured Site Control, 2) Environmental Report(s) has/have been completed or the proposal contains information demonstrating that such a study is underway, and, 3) based on feasibility and consistency of the proposed development schedule, the project can expeditiously assist the City with meeting its annual production goals.

VI. Funding Requirements and Structure of Loan

Funding Requirements, Affordability Periods, Maximum Subsidies

Proposers should plan to utilize at least 1 of the following funding sources for eligible activities. However, the Proposal does not need to identify a proposed funding source. If the project is awarded funding, the City will evaluate the use of any and all funds including but not limited to the sources listed below.

Source of Funds	Income Band	Geography	Affordability Period	Max per Unit Subsidy	Max per Project Subsidy
HOME	30% - 80%	Redevelopment Stabilization	20 years (new construction) 15 years (rehab)	Based on HOME 24 CFR Part 92	22.5% of HOME Value Limit
CDBG	30% - 80%	Redevelopment Stabilization Emerging Market	20 years (new construction) 15 years (rehab) Subject to negotiation (infrastructure)	No cap	Based on project underwrite
NSP	30% - 120%	Emerging Market	15 years (rehab)	No cap	Based on project underwrite
GO Bonds	30% - 120%	City-wide	Subject to negotiation	1/3 total costs (infrastructure)	Based on project underwrite
Other	30% - 120%	City-wide	Subject to negotiation	No cap	Based on project underwrite

Structure of Loan

The City will provide gap financing pursuant to this NOFA in the form of a repayable loan with scheduled payments

The interest rate for a qualified Community Housing Development Organization (CHDO) borrower or sponsor shall be zero percent (0%) simple annual interest. The interest rate for a qualified nonprofit borrower or sponsor shall be one percent (1%) simple annual interest. The base interest rate for all other borrowers shall be three percent (3%). However, the 3% base rate can be reduced through a combination of one or more borrower concessions:

- a) A borrower guarantee to make annual interest payments will reduce base interest rate by 1%;
- b) borrower agreement to limit loan maturity to 2 years or less reduces base interest rate by 1%;
- or
- c) borrower guarantee of annual interest and principal payments reduces base interest rate by 2%.

The borrower can combine a) and b) above to reduce the 3% annual simple interest base interest rate by 2% to the 1% annual simple interest floor rate. However, in no instance can the floor interest rate be less than 1% annual simple interest rate for a borrower in this category.

VII. Eligible and Ineligible Activities

Activities Eligible for Funding

To be eligible for funding under the New Construction and Substantial Rehabilitation Program, the proposed project must meet all the following criteria:

New Construction (Single-Family For-Sale and Rental)

- Project must consist of 5 or more units located within the municipal boundaries of the City.
- For single-family for-sale developments, the lots may be scattered. In general, the City will require that all homes constructed have a minimum square footage of 1,200 sq. ft, at least 3 bedrooms, and at least 1.5 bathrooms.

Substantial Rehabilitation (Rental Only)

- Project must be located within the municipal boundaries of the City of Dallas.
- Project must, at a minimum, meet the Substantial Rehabilitation Test.

Activities Ineligible for Funding

The following activities are not eligible for funding under this NOFA:

- Applying for awards for the sole or partial purpose of repayment of a current City or non-City residual receipts or “soft” loan.
- Reapplying for awards for the same proposed project using another source of leveraging while a City commitment is still outstanding.
- Public services activities. Public Services are activities such as senior services, youth services, child care, case management, operational costs of social services programs, housing counseling, rental or other direct financial assistance to low income persons, job training or educational services.
- Economic development or commercial business activities/proposals. Proposals will not be accepted **UNLESS** they are for development of affordable housing for low-moderate households with incomes between 30%-120% of AMI.
- Construction or rehabilitation of buildings for the general conduct of government.
- Purchase of equipment, furniture, and fixtures, and operational or maintenance expenses of facilities.
- Individual proposals for financial assistance. Individuals in need of financial assistance should contact the Office of Community Care at 214-670-5711. Individuals in need of personal home repair assistance should contact the Home Improvement and Preservation Division of the Housing and Neighborhood Revitalization Department at 214-670-7310.

VIII. Eligible and Ineligible Costs

Eligible Costs

These costs are eligible to the extent these activities lead to the production of units.

- Environmental Reviews and remediation
- Property acquisition
- Demolition
- On-site improvements
- Off-site utility connections
- Construction costs necessary to construct a project in accordance with the property and design standards listed in the Handbook
- Soft costs associated with the development and financing of the project
- Reasonable developer fees (see Adopted Comprehensive Housing Policy Appendix 2: Rental Development Underwriting)
- Relocation costs
- GO Bond Funds may be used solely for capitalized costs

For a full list of eligible project costs please refer to the following sources:

- 24 CFR § 92.206
- 24 CFR § 570.201
- Federal Register 75 FR 64322.

Ineligible Costs/Uses

- Furnishings (except where required for special needs projects)
- Most off-site improvements (utility connections into the adjacent street are eligible costs)
- Developer/sponsor administrative costs (other than included in the developer fee)
- Marketing events such as groundbreakings and grand openings
- Substitution of City funds for any source of funds that has been previously committed to the project or represented to any other funding source as being available for the project, is not permitted.
- An initial operating reserve during the period in which the project is initially marketed (not to exceed 18 months after completion)
- Capitalized replacement reserves
- Any costs not cited or listed as Eligible Costs are considered ineligible under this NOFA.
- GO Bond funds cannot be used for any working capital or non-capitalized project costs, including but not limited to developer fees or profit, leasing or sales commissions, attorney fees.
- CDBG funds shall not be used for new construction of housing or for routine maintenance.
- The payment of delinquent taxes, fees or charges on properties to be assisted with federal funds.

For a full list of ineligible costs please refer to the following sources:

- 24 CFR § 92.214
- 24 CFR § 570.207 and Register 75 FR 64322.

Appendix 1: Required Proposal Elements Checklist

TAB NO.	ELEMENT
TAB 1	Certification of Financial Stability and Regulatory Compliance (Appendix 2) Proposer Disclosure and Explanation (Appendix 2) Proposer Identity of Interest Questionnaire (Appendix 2) Affidavit of Authorized Representative and Authorization to Obtain Information Form (Appendix 2) Authorization and Release to Obtain Personal Credit Information (Appendix 2) Acknowledgement and Certification of Environmental Review Requirements (Appendix 2) Acknowledgement and Certification of CHDO Requirements (Appendix 2) Conflict of Interest Questionnaire (Link to questionnaire provided in Appendix 2)
TAB 2	Executive Summary containing a brief synopsis of the proposed development including number of units, list of income bands served, and targeted population such as seniors or homeless. Clearly describe the location of the project, project costs and the proposed financing. The proposed financing should disclose all financing sources, including funds requested under this NOFA, that the project may utilize. The Summary should also have a brief description of the proposed structure(s) (frontal elevation and floor plan only—detailed drawings are not required with initial Proposal), proposed site plan, security arrangements, amenities and accessibility/adaptability provisions. Additionally, the Summary should identify if the project contemplates a partnership with the City of Dallas Housing Finance Corporation (DHFC) and the role of the DHFC, such as General Partner, owner of the land, bond issuer, etc.
Project Team Experience and Capacity	
TAB 3	Proposer statement of qualifications that identifies Project Teams for: <ol style="list-style-type: none"> 1. *Recently completed comparable Qualified Projects completed within the last 10 years, 2. All projects underway and/or pending, include timelines, tenant services offered, most recent inspection report, and property audits. 3. Professional References for previous projects **Include details with respect to materials used and quality of workmanship/craftmanship.
TAB 4	<ol style="list-style-type: none"> 1. Provide a list of staff assigned to proposed project and their roles, individual resumes, copies of appropriate licenses and/or professional certifications of all Project Team members 2. Include a list of third-party Project Team members provide corporation profiles 3. If applicable, identify Qualified Nonprofit and outline role and ownership interest.
TAB 5	Information on qualifications of property management agent (if applicable).
TAB 6	Last 2 years' audited financial statements for Proposer, developer, or anyone having 20% or more ownership interest, and any guarantors.
TAB 7	Last 2 years' corporate audit or reviewed financial statements. If Proposer is a special purpose or single asset entity, also submit 2 years of audited financial statements for the controlling entity of the Proposer.
TAB 8	Last 2 years' tax returns for developer (990s for nonprofit developers).
TAB 9	Certified copies of all organizational documents of all entities in the project, including articles of incorporation, operating agreement, partnership agreement, as applicable.
TAB 10	As applicable, completed application for CHDO Certification along with all required documentation. (Link to application provided in Appendix 2)
TAB 11	Business Inclusion and Development Affidavit and/or History of MWBE and/or Section 3 Utilization Form (BDPS-FRM-205) Affirmative Action Requirements (BDPS-PRO-204) Ethnic Workforce Composition Report (BDPS-FRM-204) Proposer's Affidavit Type of Work by Prime and Sub-Consultant Form (BDPS-FRM-206) (Link to forms provided in Appendix 2)
Site and Development Characteristics	
TAB 12	Evidence of site control (e.g. option, deed, etc.).
TAB 13	Preliminary title insurance commitment.

TAB 14	Documentation of existing/improved property value (e.g. tax assessment, appraisal, comparable developments etc.).
TAB 15	Maps demonstrating the following: Proximity to Amenities including High Intensity Transit, Public Parks, Full Service Grocery Stores, Community or Senior Center, Aging and Disability Resource, Qualifying Medical Clinic or Hospital, Major Employment Center.
TAB 16	Site specific environmental record (as applicable) and estimate of remediation costs: 1. Radon and mold testing (as applicable) 2. Lead Based Paint risk assessment (as applicable) 3. Asbestos Containing Material (ACM) reports (as applicable).
TAB 17	Documentation of utility availability and connection costs (Water/sewer, electric, gas); Provide any engineering studies documenting availability.
TAB 18	Plans and specifications, including site plan and elevation drawings
TAB 19	Phase I and Phase II Environmental Site Assessment (ESA). The Phase I must be completed in compliance with the American Society for Testing and Materials (ASTM) standard E-1527-13, including Appendices X4 and X5. The Phase I provider should acknowledge in its "statement of purpose" that one use of the report will be to determine compliance with HUD's environmental review requirements at 24 CFR Part 58. The Phase I ESA should include the City of Dallas as a user that has reliance and be valid up to 180 days. Phase II ESA, as applicable.
TAB 20	Zoning/site plan and building/code review approvals
TAB 21	Flood Hazard Determination Form (FEMA Form 086-0-32; link to form provided in Appendix 2) from a nationally recognized flood data service or from a licensed surveyor that no portion of the property is located within the 100-year flood plain. The proposed development cannot be located in the designated floodplain.
Market Data	
TAB 22	Independent third-party market analysis that supports project assumptions including but not limited to: rents, vacancy rates, utility calculations, operating costs, absorption rates, escalating factors, market cap rates, internal rate of return and cash on cash returns demanded for projects of similar type, debt and equity requirements, etc. If combined with HTC, the market study submitted in conjunction with the TDHCA Proposal satisfies the requirement.
TAB 23	Additional Evidence of Demand - Proposals/waiting lists from similar projects, voucher/rental assistance pipelines, or Continuum of Care data for homeless/special needs projects, etc.
TAB 24	Fair Housing Review Checklist (Link to form provided in Appendix 2)
Underwriting/Financial Projections	
TAB 25	Proforma showing rent, utility allowance, and operating cost projections; or cash flow statements and projected sales; all project costs, construction period sources/uses including owner equity, and 20-year operating/cash flow projections. For single family, proforma should be through closing of sales of homes to eligible homebuyers.
TAB 26	Commitments for other financing, both permanent and construction loan sources. Documentation of construction costs (e.g. estimate by qualified individual, bids, contract documents)
TAB 27	Estimates/documentation of professional services and soft costs (e.g. architectural fees, construction period taxes/insurance, marketing expenses, realtor listing agreement, etc.)
Marketing and Leasing	
TAB 28 (Rental Only)	Marketing plan outlining: 1. Tenant selection criteria and waiting list procedures, 2. Description of primary market and outreach strategies, including affirmative marketing plan using HUD form HUD-935.2A (as applicable), 3. Availability of tenant services and appropriate referral plan, 4. Tenant selection criteria and waiting list procedures, 5. Description of primary market and outreach strategies, including affirmative marketing plan using HUD form HUD-935.2A (as applicable). (Link to form provided in Appendix 2)
TAB 29 (Rental Only)	Waiting list(s) of interested tenants - compare demographics to underwriting assumptions about household incomes, ability to pay projected rent, etc. (if available).

TAB 30 (Rental Only)	Form lease agreement consistent with 24 CFR Part 92.253
TDHCA Applications	
TAB 31 (Rental Only)	If applicable, TDHCA Rental Housing Programs Proposal and all exhibits submitted to TDHCA (for any development seeking HTC or other funding from the TDHCA)

Appendix 2: Forms

The following is a list of forms that must be submitted, if applicable, with the Proposal. Failure to submit required forms will eliminate Proposals from further consideration.

- Certification of Financial Stability and Regulatory Compliance
- Proposer Disclosure and Explanation Form
- Proposer Identity of Interest Questionnaire
- Affidavit of Authorized Representative and Authorization to Obtain Information
- Authorization and Release to Obtain Personal Credit Information
- Acknowledgement and Certification of Environmental Review Requirements
- Acknowledgement and Certification of CHDO Requirements
- Conflict of Interest Questionnaire. The link to the form is as follows: <https://www.ethics.state.tx.us/forms/CIQ.pdf>.
- CHDO Application, if applicable. The link to the application is as follows: <https://dallascityhall.com/departments/housing-neighborhood-revitalization/Pages/CHDOCBDO.asp>.
- Business Inclusion and Development Affidavit and/or History of MWBE and/or Section 3 Utilization Form. The link to the forms is as follows: http://www3.dallascityhall.com/business_development/BID/BID_Affidavit.pdf
- Fair Housing Review Checklist. The link to the checklist is as follows: <https://dallascityhall.com/departments/fairhousing/pages/fair-housing-review-checklist.aspx>
- FEMA Form 086-0-32. Please contact a surveyor to provide with Proposal
- HUD-935.2A. The link to the form is as follows: <https://www.hud.gov/sites/documents/935-2A.PDF>.

Proposer Certification (Form 1) and Disclosures (Form 2)

Every Proposer is required to complete the Certification of Financial Stability and Regulatory Compliance (“Certification”). If a Proposer is not able to certify all of the items listed in the form, the Proposer must also complete the Proposer Disclosure and Explanation Form (“Disclosure”). The Proposer should provide sufficient explanation and context related to any disclosures so that the City can evaluate the nature and severity of any history of financial instability or regulatory non-compliance.

A Proposal will be deemed incomplete and will not be reviewed if the Certification is not accurately and fully completed. Likewise, if the Proposer is required to complete the Disclosure, the Proposal will be deemed incomplete and will not be reviewed if the Disclosure is not accurately and fully completed.

By signing the Certification, the Proposer agrees to allow the City to contact Banking references and obtain the Proposer’s corporate credit report (e.g. Dun & Bradstreet) or personal credit report (e.g. sole proprietors, S-corps, etc.).



CERTIFICATION OF FINANCIAL STABILITY AND REGULATORY COMPLIANCE

NAME: (PRIMARY CONTACT)	
ADDRESS:	
PHONE: (PRIMARY CONTACT)	
EMAIL: (PRIMARY CONTACT)	
NAME OF AUTHORIZED REPRESENTATIVE:	
AUTHORIZED REPRESENTATIVE PHONE:	
AUTHORIZED REPRESENTATIVE EMAIL:	

I certify that neither the Proposer, its Affiliates, nor any Project Team members have experienced or been served with any of the following within the past five (5) years:

- bankruptcies, defaults or foreclosures, or any event that could lead to a potential bankruptcy, default or foreclosure. For this purpose, violation of terms, conditions and/or covenants, whether or not a Notice of Default has been recorded, is deemed a default;
- a civil or criminal lawsuit filed by a municipal, state or federal government where the Proposer or any of its Affiliates or Project Team members was a named defendant; and
- any notices of violation or citations issued by a local, state or federal government regarding fair housing, health and safety, or zoning violations on the Proposer's, its Affiliate's or Project Team member's projects.

If you cannot certify every element, please complete the Proposer's Disclosure and Explanation Form.

Signed:		<input type="checkbox"/> Authorized Representative
Print Name:		
Date:		



PROPOSER DISCLOSURE AND EXPLANATION

NAME: (PRIMARY CONTACT)	
ADDRESS:	
PHONE: (PRIMARY CONTACT)	
EMAIL: (PRIMARY CONTACT)	
NAME OF AUTHORIZED REPRESENTATIVE:	
AUTHORIZED REPRESENTATIVE PHONE:	
AUTHORIZED REPRESENTATIVE EMAIL:	

Below is a disclosure and explanation of the following financial or regulatory history related to the Proposer, its Affiliates or Project Team members.

This disclosure contains an additional _____ pages of attachments.

Signed:		<input type="checkbox"/> Authorized Representative
Print Name:		
Date:		



PROPOSER IDENTITY OF INTEREST QUESTIONNAIRE

NAME: (PRIMARY CONTACT)	
ADDRESS:	
PHONE: (PRIMARY CONTACT)	
EMAIL: (PRIMARY CONTACT)	
NAME OF AUTHORIZED REPRESENTATIVE:	
AUTHORIZED REPRESENTATIVE PHONE:	
AUTHORIZED REPRESENTATIVE EMAIL:	

Please disclose and provide an explanation of any relationship based on family ties or financial interests between or among two or more entities involved in any proposed or anticipated project-related transactions. The City will take a broad approach to defining Identities of Interest and expects all Proposers to err on the side of disclosure. That is, if there is any question about whether an Identity of Interest may exist, the relationship should be disclosed and explained to the City.

This Identity of Interest Questionnaire contains an additional _____ pages of attachments.

Signed:		<input type="checkbox"/> Authorized Representative
Print Name:		
Date:		



AUTHORIZATION AND RELEASE TO OBTAIN PERSONAL CREDIT INFORMATION

The undersigned hereby authorizes the City of Dallas or its agents or employees (collectively "City") to obtain any and all information pertaining to my business or personal credit history from any reporting agency or bureau, and to consider such information when making any decisions regarding proposals submitted under the Notice of Funding Availability by _____.

I understand that I am not obligated to provide City this authorization; however, I have voluntarily agreed that such information can be released to City so that it will consider the proposal. I authorize, without reservation, any person or entity contacted by City to furnish information requested by City.

I HEREBY RELEASE CITY FROM ANY AND ALL LIABILITY RELATED TO THIS AUTHORIZATION AND RELEASE TO OBTAIN PERSONAL CREDIT INFORMATION.

Dated: _____

Signature: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This instrument was acknowledged before me on the ___ day of _____, 20___, by _____, an individual.

Notary Public, State of Texas



AFFIDAVIT OF AUTHORIZED REPRESENTATIVE AND AUTHORIZATION TO OBTAIN INFORMATION

ENTITY TYPE AND STATE OF FORMATION	
PROPOSER NAME: (PRIMARY CONTACT)	
ADDRESS:	
PHONE: (PRIMARY CONTACT)	
EMAIL: (PRIMARY CONTACT)	
NAME/TITLE OF AUTHORIZED REPRESENTATIVE:	
AUTHORIZED REPRESENTATIVE PHONE:	
AUTHORIZED REPRESENTATIVE EMAIL:	

Before me on this day personally appeared _____ as Authorized Representative for the Proposer listed above, and after by me being duly sworn, hereby certifies that all materials submitted to the City of Dallas or its agents or employees (collectively "City") about this proposal are true and correct. The undersigned understands that any submission of false information shall result in disqualification for funding under this Notice of Funding Availability, and that submission of incomplete information may result in rejection of the proposal.

The undersigned authorizes the City to contact any party in order verify information in this proposal. The undersigned acknowledges that Proposer is not obligated to provide City this authorization, but has voluntarily agreed to such release so that City will consider this proposal. The undersigned hereby authorizes, on behalf of Proposer, without reservation, any person or entity contacted by City to furnish all information requested by City.

Dated: _____ Signature: _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ and by oath stated that the facts herein stated are true and correct. SWORN TO AND SUBSCRIBED BEFORE ME before me on this _____ day of _____, 20 _____.

Notary Public in and for the State of Texas



ACKNOWLEDGEMENT AND CERTIFICATION OF ENVIRONMENTAL REVIEW REQUIREMENTS

NAME OF AUTHORIZED REPRESENTATIVE:	
AUTHORIZED REPRESENTATIVE PHONE:	
AUTHORIZED REPRESENTATIVE EMAIL:	

The National Environmental Policy Act (NEPA) was established in 1969 to give environmental values appropriate consideration in decision-making with regard to federally-funded projects. Because all projects funded under this NOFA assume federal funds, the environmental review process and clearance must meet NEPA standards.

In addition, projects must meet the requirements of the Texas Commission on Environmental Quality (TCEQ). NEPA and TCEQ environmental laws differ in their requirements; project approval under TCEQ does not constitute NEPA project approval, and vice-versa.

An initial award of funds does not constitute a commitment of funds or site approval until satisfactory completion of a NEPA environmental review and receipt by the Authority to Use Grant Funds from HUD under 24 CFR Part 58. The provision of any funds to the project is conditioned on City's determination to proceed with, modify or cancel the project based on the results of subsequent NEPA environmental review. Furthermore, the proposer shall not undertake or commit any funds to physical or choice-limiting actions, including further property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the NEPA environmental clearance. Violation of this provision shall result in the denial of funds.

Notwithstanding the above, Proposers may begin architectural and engineering services, purchase options and certain pre-development activities only with prior written approval from the City of Dallas. Undertaking these activities without prior approval will result in the denial of funds under this Request for Proposal.

In any case where architectural and engineering services, purchase options or other pre-development activities are underway, I will notify the City of Dallas of the status of those activities and wait on written approval from the Housing and Neighborhood Revitalization Department before proceeding with any additional activity.

I acknowledge and certify that I have read this information and understand these requirements.

Signed:		<input type="checkbox"/> Authorized Representative
Print Name:		
Date:		



ACKNOWLEDGEMENT AND CERTIFICATION OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) REQUIREMENTS

NAME
OF AUTHORIZED REPRESENTATIVE:

AUTHORIZED REPRESENTATIVE PHONE:

AUTHORIZED REPRESENTATIVE EMAIL:

As a participating jurisdiction, the City of Dallas (City) is required to commit and expend no less than **15%** of its annual HOME allocation with Community Housing Development Organizations (“CHDO”). Additionally, the City in its sole discretion can allocate up to **5%** of the HOME allocation each year for operating expenses for CHDOs (see 24 CFR Part 92.208). The City may provide operating funds to CHDOs based on financial need and the expectation that the organization is utilizing or will utilize the City’s HOME CHDO set aside funding within 24 months of the award.

In order to be consider for the CHDO set aside and the funding for operating expenses, an organization must be certified as a CHDO by the City.

The undersigned understands and certifies that the organization shall meet the CHDO requirements under 24 CFR Part 92, have read the City’s CHDO Manual, and must be certified as a CHDO by the City prior to any contract award.

Dated: _____

Signature: _____

BEFORE ME, the undersigned authority, on this day personally appeared _____ and by oath stated that the facts herein stated are true and correct. SWORN TO AND SUBSCRIBED BEFORE ME before me on this _____ day of _____, 20 _____.

Notary Public in and for the State of Texas

Appendix 3: Glossary

24 CFR Part 92 is the federal regulation that implements the HOME Investment Partnerships Program (“HOME”). According to this regulation, “under the HOME Investment Partnerships Program Act, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families.”

24 CFR Part 500 is the federal regulation that implements the Community Development Block Grant (“CDBG”). HUD provides annual grants on a formula basis to entitled cities and counties to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons.

Affiliate is an individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, has Control of, is Controlled by, or is under common Control with any other person. All entities that share a Principal are Affiliates.

Affordability is units that are affordable to households earning 30% - 120% of Dallas Area Median Income.

Aging and Disability Resource Center is a facility that serves older adults and persons with disabilities, as well as family members and caregivers that is part of the No Wrong Door system and is designed to streamline public access to long-term services care programs.

Affordability Period means the period of time that units set aside for households earning 30% - 120% of Dallas Area Median Income shall remain affordable; length of time will be determined based on funding source.

Community or Senior Center is a public facility owned by the City of Dallas, either operated by the City of Dallas through its employees or via a private management contract, that provides programming targeted at either all age ranges or specifically at older adults.

Conflict of Interest is defined under federal regulations 24 CFR 92.356 and 24 CFR 570.611 and state statute Chapter 176 of the Texas Local Government Code.

Control (including the terms “Controlling” and “Controlled by” and/or “under common Control with”) means the power, ability, or authority, acting alone or in concern with others, directly or indirectly, to manage, direct, superintend, restrict, regulate, govern, administer, or oversee.

Eligible Cash is Surplus cash available for partnership distribution, less any outstanding: credit adjusters, asset management fees, operating reserve account replenishment, limited partner loans that have been approved by the City, deferred developer fees, and supplemental replacement reserve deposits approved by the City.

Note: Incentive management fees have been deliberately omitted from the above list. Payment of incentive management fees shall be subordinate to repayment of the City’s loan(s).

Eligible Homebuyer means a potential homebuyer with a household whose income is between 40% - 120% of the Dallas Area Median Income.

Environmental Reports are a Phase I environmental site assessment and, if applicable, a Phase II environmental site assessment.

Federal Register 75 FR 64322 is the federal notice that advises the public of the allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations granted to grantees under Section 2301(b) of the Housing and Economic Recovery Act of 2008. Neighborhood Stabilization Program (“NSP”) funding is awarded under this notice of which the purpose is to stabilize neighborhoods whose viability has been, and continues to be, damaged by the economic effects of properties that have been foreclosed upon and abandoned.

Full scale grocery store is a store that sells a full line of groceries, meat, produce, and dairy products.

High Frequency Transit is accessible public transportation where the frequency of departures and arrivals is no more than every 15 minutes.

HUD means the United States Department of Housing and Urban Development.

Identity of Interest means (whether or not such term is capitalized) is any relationship based on family ties or financial interests between or among two or more entities involved in a project-related transaction which reasonably could give rise to a presumption that the entities may not operate at arms-length. Beyond this general definition, an identity of interest relationship will be deemed to exist if: 1) An entity, or any owner of any direct or indirect ownership interest in such entity, or any family member of any such owner is also an owner, through a direct or indirect ownership interest, or an officer, director, stockholder, partner, trustee, manager, or member of the counterparty/other entity; or 2) Any officer, director, stockholder, partner, trustee, manager, member, principal staff, contract employee or consultant of an entity, or any family member of thereof, is an owner, through any direct or indirect ownership interest, or an officer, director, stockholder, partner, trustee, manager or member of the counterparty/other entity. For purposes of this definition, “family member” means the spouse, parents or stepparents, children or stepchildren, grandparents or step-grandparents, grandchildren or step-grandchildren, aunts, uncles, parents-in-law, and siblings-in-law (or their children or stepchildren). It also includes any other similar relationship established by operation of law, including but limited to guardianship, adoption, foster parents, and the like.

Major Employment Centers are urban areas with a concentration of jobs and services including but not limited to business, industrial, and office parks, and medical or educational districts, etc.

Market Feasibility Report is an analysis of the local real estate market to determine if the market will support a proposed development and that projected incomes are greater than projected costs.

Person means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including the individuals members of the group.

Project Team means all persons and Affiliates thereof that play a role in the development, construction, rehabilitation, management and/or continuing operation of a development.

Proposer means any individual or group of individuals and any Affiliates who apply for a funding award pursuant to this NOFA.

Public park is land owned or managed by the city, whether located inside or outside the city limits, that is planned, developed, or used for active or passive recreational use by the public.

Qualifying Medical Clinic or Hospital is a Federally Qualified Health Center (FQHC) that provides comprehensive health care services to a target underserved population, including individuals who are indigent, uninsured and underserved, in a specific area and determines patient eligibility for services based on family income and on a sliding fee schedule.

Qualified Nonprofit Organization is an entity duly organized as a nonprofit corporation under applicable state law, currently in good standing within its state of incorporation and the State of Texas, and at the time of proposal, exempt from taxation under the Internal Revenue Code.

Qualified Projects means a multifamily project that was funded in part by either 1) 24 CFR Part 92, 2) 24 CFR Part 500, 3) Federal Register 75 FR 64322, 4) Section 42, or 5) Section 142.

Reinvestment Strategy Areas (“RSAs”) means the areas adopted under the Comprehensive Housing Policy to address 3 market types in need of City investment:

Redevelopment Areas: A redevelopment area is characterized by a known catalytic project that has submitted a request for funding that shows preliminary viability and will begin within the next 12 months. The project as proposed must contain a housing component and must address the existing market conditions as identified in the MVA and must demonstrate a level of housing production supported through a third-party independent market analysis and show affordability to a mix of income bands.

Redevelopment Areas: Midtown, High Speed Rail, Wynnewood, and Red Bird

Stabilization Areas: Stabilization areas are characterized as G, H, and I markets that are surrounded by A-E markets and as such are at risk of displacement based on known market conditions including upcoming redevelopment projects. These areas are also where Incentive Zoning and Accessory Dwelling Units should be focused to allow for increased density.

Stabilization Areas: LBJ Skillman, Vickery Meadow, Casa View, Forest Heights / Cornerstone Heights, East Downtown, The Bottom, West Dallas, and Red Bird North.

Emerging Market Areas: These markets are characterized as areas in need of intensive environmental enhancements, master planning and formalized neighborhood organization. In order to facilitate the creation of mixed income developments, the City recommends seeking designation as Neighborhood Revitalization Strategy Areas (NRSAs) through HUD in order to prepare the area for real estate investments in a 3 to 5-year time frame and provide flexibility of use of funds without income qualifications. trust in local government and aid staff in assessing the need for strategic partnerships.

Emerging Market Areas: Southern Gateway, Pleasant Grove, and University Hills.

Section 42 is in Chapter 26 of the Internal Revenue Code. This section defines low-income housing credits and sets forth rules related to the issuance of such credits.

Section 142 is in Chapter 26 of the Internal Revenue Code. This section defines exempt facility bonds and sets forth rules related to the issuance of such bonds, including those for qualified residential rental projects.

Services means

For homeowners: counseling courses offered such as first-time homebuyer, after purchase such as maintenance requirements, financial literacy during the affordability period.

For tenants: hiring 1 full time equivalent resident services coordinator for every 600 bedrooms, provide onsite educational, wellness and/or skill building classes via third party contract or onsite employees, or provides onsite, licensed child care or after school program that operates at least 20 hours per week during the Affordability Period.

Site Control is defined in Texas Administrative Code, Chapter 10, Section 10.204(10). In order to establish site control one of the following must be provided (i) a recorded warranty deed vesting indefeasible title in the Proposer or, if transferrable to the Proposer, an Affiliate of the Proposer, with corresponding executed settlement statement (or functional equivalent for an existing lease with at least forty-five (45) years remaining); or (ii) a contract or option for lease with a minimum term of forty-five (45) years that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date; or (iii) a contract for sale or an option to purchase that includes a price; address and/or legal description; proof of consideration in the form specified in the contract; and expiration date.

Substantial Rehabilitation is one or more of the following:

1. replacement of two or more major building components (roof, wall or floor structures, foundation, plumbing, central HVAC or electrical system); or
2. rehabilitation costs are 15% or more, exclusive of any acquisition and/or acquisition and development soft costs, of the property's replacement cost (fair market value) after completion of all required repairs, replacements and improvements; or
3. rehabilitation hard costs are \$10,000 or more per unit.

Appendix 4: Requirements

The following requirements may apply to your project:

- Insurance and Bonding
- Certificate of Good Standing
- Design Standards: Universal Design & Compliance with Comprehensive/ Neighborhood Plans
- Fair Housing and Equal Opportunity
- Affirmative Fair Housing Marketing
- Accessibility for Disabled Persons
- Equal Opportunity Employment
- Section 3 Economic Opportunity
- Minority/Women Business Enterprises
- Davis Bacon and Other Labor Standards
- Conflict of Interest Disclosure
- Lead-Based Paint Testing and Remediation
- Residential Anti-Displacement and Relocation Assistance
- Underwriting and Cost Reasonableness
- Debarred Contractors
- Environmental Review
- Incomes and Rents
- Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (SuperCircular 2 CFR Part 200)

Exhibit C



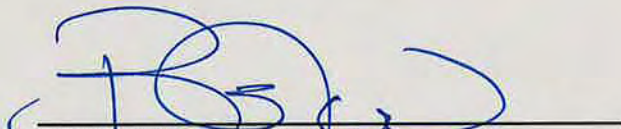
STATE OF TEXAS §
COUNTY OF DALLAS §
CITY OF DALLAS §

I, **BILIERAE JOHNSON**, City Secretary of the City of Dallas, Texas, do hereby certify that the attached is a true and correct copy of:

RESOLUTION NO. 19-0360

which was passed by the Dallas City Council on **February 27, 2019**.

WITNESS MY HAND AND THE SEAL OF THE CITY OF DALLAS, TEXAS, this the **5th** day of **March, 2019**.


BILIERAE JOHNSON
CITY SECRETARY
CITY OF DALLAS, TEXAS



PREPARED BY: LJ

February 27, 2019

WHEREAS, on May 9, 2018, City Council adopted a Comprehensive Housing Policy Manual (Policy) that set citywide production goals for homeownership and rental units for the next three years along with respective income bands that will be prioritized within the production goals and also set forth various programs, tools and strategies to be used to meet the production goals while also overcoming concentrations of poverty and racial segregation by Resolution No. 18-0704; and

WHEREAS, on November 28, 2018, City Council adopted certain amendments to the Policy in order to correct inconsistencies and to facilitate effective implementation by Resolution No. 18-1680; and

WHEREAS, on January 24, 2018, City Council supported the 2018 Texas Department of Housing and Community Affairs' (TDHCA) 9% low-income housing tax credit application for the development at 2400 Bryan Street and authorized a line of credit agreement in the amount of \$500.00 for a commitment of development funding by Resolution No. 18-0219; and

WHEREAS, on August 30, 2018, the City issued a Notice of Funding Availability in accordance with the Policy and 2400 Bryan Street, LLC submitted an application for gap financing and received a fundable score; and

WHEREAS, on January 25, 2019, the City of Dallas Housing Finance Corporation Board of Directors at its Board meeting approved entering into an agreement to purchase and own the land, enter into a long-term ground lease, and taking an ownership interest in 2400 Bryan Street, LLC; and

WHEREAS, the proposed development is located in the East Downtown Redevelopment target area, one of the 15 approved Reinvestment Strategy Areas in the Policy, and the proposed development is a mixed use, mixed-income multifamily residential development with 10,000 square feet of retail space providing 49% of the total units at market rate and 51% of the total units to households earning 60% or below of Area Median Income including units designated for tenants earning 30% and 50% of Area Median Income and provides future residents with access to opportunities such as transit, retail and jobs.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

February 27, 2019

SECTION 1. That the City Manager is hereby authorized to execute **(1)** a development loan agreement in an amount not to exceed \$13,026,943.00 (comprised of \$3,605,570.00 in HOME Investment Partnerships Program (HOME) Funds, \$6,000,000.00 in City of Dallas Public/Private Partnership (P/PP) Funds, and \$3,421,373.00 of Community Development Block Grant (CDBG) Funds; **(2)** a conditional grant agreement in an amount not to exceed \$973,057.00 in 2012 General Obligation Bond (GO Bond) Funds; and **(3)** all other necessary documents, including, but not limited to promissory note, deed of trust, and deed restrictions to effectuate the transaction with 2400 Bryan Street, LLC or affiliate thereof for the development of a mixed-use, mixed-income multifamily residential development located at 2400 Bryan Street, approved as to form by the City Attorney.

SECTION 2. That the City of Dallas Housing Finance Corporation is authorized to purchase and own the land, enter into a long-term ground lease with 2400 Bryan Street, LLC, and take an ownership interest in 2400 Bryan Street, LLC.

SECTION 3. That the conditional grant agreement, loan agreement, and all related documents will include the terms and conditions listed in the development term sheet, attached hereto as **Exhibit B**.

SECTION 4. That the City Manager is hereby authorized to execute each of the agreements described herein including any financing and associated documents related to the conditional grant agreement and loan agreement, subordinations to the senior lender for a loan in a greater amount, and release of liens and termination of deed restrictions on the property upon satisfaction of all applicable conditions, approved as to form by the City Attorney. The Director of Housing and Neighborhood Revitalization and the Director of the Office of Economic Development may extend deadlines by up to one year.

SECTION 5. That the Chief Financial Officer is hereby authorized to encumber funds and disburse funds to 2400 Bryan Street, LLC, Vendor VC18122, as the City receives and reviews reimbursement requests and related supporting documentation submitted by 2400 Bryan Street, LLC for eligible expenditures and accepts supporting evidence as defined in the agreements for the total amount not to exceed \$14,000,000.00 from funding sources listed and described below:

<u>Fund</u>	<u>Unit</u>	<u>Object</u>	<u>Program</u>	<u>Amount</u>
CD18	810C	3015	NOFA18 2400 BRYAN	\$2,156,044.00
CD18	801C	3015	NOFA18 2400 BRYAN	\$1,265,329.00
HM17	275B	3015	NOFA18 2400 BRYAN	\$3,605,570.00
3U53	NEW	3016	NOFA18 2400 BRYAN	\$ 580,627.00
2U53	NEW	3016	NOFA18 2400 BRYAN	\$ 392,430.00
0352	1879	3015	NOFA18 2400 BRYAN	\$6,000,000.00

February 27, 2019

SECTION 6. That Pursuant to Section 3 of this resolution, a \$6,000,000.00 Chapter 380 loan will be made upon the execution of the loan documents and the terms and conditions related to this loan as referenced in Exhibit B for a term of 15 years from execution of said loan document, then the Chief Financial Officer is hereby authorized to encumber and disburse loan funds to developer 2400 Bryan Street, LLC, Vendor VC18122 in a total amount not to exceed \$6,000,000.00 in accordance with the terms and conditions of the loan documents from Public/Private Partnership Fund, Fund 0352, Department ECO, Unit 1879, Object 3015, Activity PPPF, Program NOFA18 2400Bryan, Encumbrance/Contract No. HOU-2019-00009571.

SECTION 7. That Pursuant to Sections 3 and 5 of this resolution, once loan documents are signed and loan funds disbursed, that the Chief Financial Officer be and is hereby authorized to set up the respective notes receivable for the principal in the Public/Private Partnership Fund, Fund 0352, Department ECO, Balance Sheet Account 023D notes receivable and deferred revenue Balance Sheet Account 0898 in the respective amounts of the loan disbursements up to a total not to exceed \$6,000,000.00 related this portion of the developer's loan.

SECTION 8. That Pursuant to Sections 3 and 5 of this resolution, that the Chief Financial Officer is hereby authorized to receive and deposit loan principal repayment from developer 2400 Bryan Street, LLC (as per Exhibit B) in the Public/Private Partnership Fund, Fund 0352, Department ECO, Unit 1879, Revenue Source 847G, and reverse the notes receivable for the principal Balance Sheet Account 023D and deferred revenue respective Balance Sheet Account 0898 in Fund 0352 for repayment of the principal amount not to exceed \$6,000,000.00 of the loan.

SECTION 9. That Pursuant to Sections 3 and 5 of this resolution, once loan documents are signed and loan funds disbursed, that the Chief Financial Officer be and is hereby authorized to set up an interest receivable for the interest in the Public/Private Partnership Fund, Fund 0352, Department ECO, Balance Sheet Account 028E interest receivable and deferred revenue Balance Sheet Account 0898 annually in the amount specified in Exhibit B for the interest for that corresponding year during the loan period as per the loan agreement provisions specified in Exhibit B.

SECTION 10. That Pursuant to Sections 3 and 5 of this resolution, that the Chief Financial Officer is hereby authorized to receive and deposit loan interest payment amounts from developer 2400 Bryan Street, LLC (as per Exhibit B) in the Public/Private Partnership Fund, Fund 0352, Department ECO, Unit 1879, Revenue Source 847H, and reverse the interest receivable Balance Sheet Account 028E and deferred revenue Balance Sheet Account 0898 in the Public/Private Partnership Fund, Fund 0352 for repayment of interest amounts of the loan annually for the amount of interest specified in Exhibit B.

190360

February 27, 2019

SECTION 11. That the City Chief Financial Officer is hereby authorized to record notes receivable - developers loan in Balance Sheet Account 033F and deferred revenue-home loans in Balance Sheet Account 0859 in fund CDBG, HOME and P/PP for the amount of the loan.

SECTION 12. That this resolution does not constitute a binding agreement upon the City or subject to the City to any liability or obligation until such time as the loan and conditional grant documents are duly approved by all parties and executed.

SECTION 13. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.



Exhibit D

Authority to Use Grant Funds

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

OF

To: (name and address of Grant Recipient and name/title of Chief Executive Officer)
T. C. Broadnax, City Manager
City of Dallas
1500 Marilla, Room 4EN
Dallas TX 75201

Copy To: (name and address of Subrecipient)
Dallas Housing Authority
3939 N. Hampton Rd.
Dallas TX 75212

We received your Request for Release of Funds and Certification, form HUD-7015.15, on

4/17/2019

Your Request was for HUD/State Identification Number(s)

B-18-MC-48-0009
M-17-MC-48-0203

All objections, if received, have been considered, and the minimum waiting period has transpired. You are hereby authorized to use funds provided to you under the above HUD/State Identification Number. File this form for proper record keeping, audit, and inspection purposes.

HOME Investment, CDBG, Section 8, Project Based Voucher Program

2400 Bryan Street, Dallas, TX 75201

Purpose Affordable housing is a high priority for the City of Dallas. The multifamily development proposes to provide quality, affordable workforce housing near transit facilities and in close proximity to employment opportunities.

Project Description: The City of Dallas Housing & Neighborhood Revitalization Department will disburse \$3,605,570.00 in HOME Investment Partnerships Program ("HOME") funds and \$3,421,373.00 of Community Development Block Grant ("CDBG) funds of 2400 Bryan Street, LLC to develop a 15-story mixed use development with approximately 10,000 square feet of retail space and a mixed-income multifamily rental residential with 217 units to downtown Dallas. The Housing Authority Project Issues: The project requires noise mitigation and incorporation of specific building design to comply with HUD acceptable noise levels.

Mitigation Noise level above 75dB, noise mitigation approved by CO, and EIS requirement waived by CO. The project will require wall construction and window construction to comply with HUD acceptable noise levels.

Estimated Project Cost:

HOME Funding = \$3,605,570

CDBG Funding= \$3,421,373

City of Dallas Public Private Partnership Funds = \$6,000,000

General Obligation Bond (Go Bond) Funds = \$973,057

The Housing Authority of Dallas will also provide 70 project-based vouchers for tenants.

The remaining funds will be comprised of construction loan, permanent loan and tax Credits.

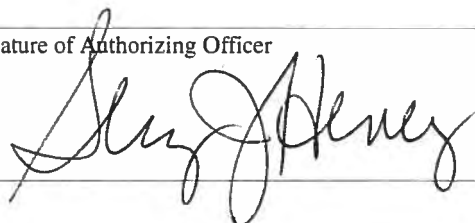
Total Estimated Project Cost: \$77,746,8000

#537

Typed Name of Authorizing Officer

Shirley J. Henley

Signature of Authorizing Officer



Date (mm/dd/yyyy)

5/3/2019

Title of Authorizing Officer

CPD Director

7c

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on timely filed appeals of material deficiencies and scoring of HTC Application 19013 Our Lady of Charity Apartments, under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) application 19013 Our Lady of Charity, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, staff determined that the Application should be terminated because the unit floor plans include three unit types that fail to meet the minimum square footage per unit threshold requirements for New Construction described in 10 TAC §11.101(b)(6)(A);

WHEREAS, staff determined that the Application does not qualify for points under 10 TAC §11.9(b)(1)(A) related to Unit Sizes because 10 Unit types do not meet the minimum square footage per unit requirements to meet this rule;

WHEREAS, the Applicant timely filed appeals of both issues; and

WHEREAS, the Acting Director denied the appeals;

NOW, therefore, it is hereby

RESOLVED, that the threshold and scoring appeals for 19013 Our Lady of Charity are hereby denied, and the application be terminated.

BACKGROUND

10 TAC §11.204, related to Required Documentation for Application Submission, identifies the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. Just as with the HTC Selection Criteria, the rule creates the format for information required by Statute and Code, and information necessary to evaluate and underwrite the Application.

10 TAC §11.9, related to Competitive HTC Selection Criteria, identifies the scoring criteria used in evaluating and ranking Applications. It includes those items required under Tex. Gov't Code, Chapter 2306 (Statute), §42 of the Internal Revenue Code (the Code), and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code.

The Application proposes the Adaptive Reuse of an existing historic structure. Per 10 TAC §11.1(d)(1) related to the definition of Adaptive Reuse, Adaptive Reuse Developments will be considered as New Construction, and therefore must satisfy the requirements of a New Construction application. The Development will have 72 units for a general population in San Antonio. Staff received an RFAD regarding the Application requesting that staff review the Unit plans and determine if the Application qualified for points under 10 TAC §11.9(b)(1)(A) related to Unit Sizes, and whether the Application met the unit sizes threshold requirements of 10 TAC §11.101(b)(6)(A).

Upon review of the issues raised, staff determined that the unit floor plans include at least three unit types that fail to meet the minimum square footage per unit required to satisfy threshold for New Construction described in 10 TAC §11.101(b)(6)(A). Per the rule:

Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

Per the Unit plans submitted in the Application, the Units labeled E-1, E-3, and E-6 are zero bedroom "efficiency" Units and each is smaller than 500 square feet.

Staff sent a deficiency notice, and in response the Applicant provided documentation from the project architect to explain how the square footage of the Units was determined. Per the Applicant, the square footage was measured from the "load bearing masonry walls." However, as required by 10 TAC §11.1(d)(82), the definition for Net Rentable Area (NRA), "NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units." The measurement must be made to the outside of the stud, i.e. the back side of the object to which the interior wall would affix. Where, as in the plans in the Application, there is a space between the interior wall and the exterior masonry, the use of the "load-bearing brick masonry" (i.e. the exterior wall) as a measuring point for NRA would necessarily include the area within the walls

and the exterior walls, themselves, which is excluded by the definition of NRA. This is of concern because that is not space available for use by the tenant.

Because the Application did not meet the threshold requirement for Unit sizes, the Application was recommended for termination, pending the Applicant's ability to appeal.

Staff also determined that the Application does not qualify for six points under 10 TAC §11.9(b)(1)(A) related to Unit Sizes because an even larger number of Unit types do not meet the minimum square footage required to achieve this scoring item, subject to the Applicant's ability to appeal. The loss of the six points means that the Application will also lose six points under 10 TAC §11.9(e)(3) related to Pre-application Participation, because the Application final score (inclusive of only scoring items reflected on the self-score form) varies by more than four points from what was reflected in the preapplication self-score. In total, the Application lost 12 points, subject to the Applicant's ability to appeal.

The Applicant's response to the deficiency notice included Unit plans with a "non-structural furr out" for some of the Units and that changed the location of the wall in others. The appeal states that this information "may have been misinterpreted due to technical and design elements presented in the drawings," and clarifies that the Units will have no structural studs and the net rentable area (NRA) is measured in the floor plans to the existing outside wall. The appeal asserts that there is a "gap" in the rules in that the "QAP and Multifamily Rules do not provide clear language and/or guidance in determining NRA for historic buildings nor do they provide for necessary preservation of existing load bearing walls in historic projects." Staff points out that though the Unit plans provided in the appeal are labeled "before" and "after," this is actually the third set of plans for the E-1, E-3, and E-6 Efficiency Units submitted: those from the Application (which did not include the "non-structural 'furr out' walls as the appeal claims), those from the deficiency response (which introduced the "non-structural 'furr out' walls), and now this latest set with the appeal.

The Department does not believe that there is a gap in the rules. The rules clearly explain how NRA is to be uniformly measured, and makes no exceptions for historical projects. That the walls will not have structural studs, as the appeal claims, does not mean that the Development is absolved from having to comply with the rules. The definition in the rule makes it clear that NRA includes the area that serves the Unit and an allowance in the calculation of square footage for a little extra, i.e., the width of the stud to which the wall surface is attached. Indeed, the rule definition of NRA specifically excludes "other areas not actually available to the tenants for their furnishings, [and does not] include the enclosing of walls for such areas." In the plans submitted with the deficiency response and the appeal, the Units include in the NRA the "furr out" walls as well as space behind them, and the entire width of the masonry to the exterior of the structure. The applicant seeks to calculate the area inside such 18 inch walls as part of NRA. However, these furr out walls, regardless of whether they are structural, would clearly define the limits of area available to the tenant for their furnishings. Indeed, the plans submitted with the Application

actually show how furnishings are located to the interior of the furr out walls, and calculated the dimensions accordingly.

During the design phase of the Development, it may be that the interior adjoining walls of the Units could have been located so that the plans for the Units would meet the required square footages. However, the appeal asks the Department to allow for a measurement different from the one submitted with the Application – adding the distance to the outside of 18 inch walls, meaning that the tenant would be deprived of over 50 square feet of net rentable area, for which they pay rent, in the E-1 and E-3 Units, and vastly more in the E-6 Unit.

The appeal cites staff's treatment of a previous historical project as an example of staff accepting this kind of NRA calculation in the past. Staff reviewed Conrad Lofts (#16034) and found that the plans include the note "SF measured outside existing wall and new wall," and that the NRA may have been measured to the outside of the existing wall. Staff observes on this 2016 application that the unit dimensions that bear this note show 1 bedroom plans with 785 square feet, 2 bedroom plans with 1,096 square feet, and 3 bedroom plans with 1,339 square feet. Even accounting for the potential misuse of an exterior wall as part of the square footage, the plans to this 2016 application showed dimensions considerably in excess of minimum square footage threshold standards. Here, the Application plans show square footage under the threshold. Staff used the dimensions noted on the plans submitted with the Application, compared them with the applicable threshold rule, and has sought to hold the Application to the rules.

Staff recommends the Board deny the appeals.

19013 Our Lady of Charity

RFAD



May 1, 2019

Via Email

Sharon D. Gamble MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711-3941

RE: Our Lady of Charity Apartments, TDHCA #19013

Dear Ms. Gamble:

Please accept this correspondence as a Request for Administrative Deficiency for Our Lady of Charity Apartments proposed in the City of San Antonio. Specifically, we're contesting the eligibility of the application to receive points under subsection §11.9(b)(1)(A) of the Qualified Allocation Plan ("QAP") which establishes "criteria promoting the development of high-quality housing". This criteria awards points to an application that meets minimum square footage standards such as "five-hundred fifty (550) square feet for an Efficiency Unit" and "one-thousand fifty (1,050) square feet for a three Bedroom Unit".

The plans submitted by the Applicant include architectural drawings (i.e. floor plans) documenting that the proposed apartments seemingly meet the minimum square foot requirement to qualify for points as a New Construction/Adaptive Reuse development under this section of the QAP. However, this is **not** the case, and this is **not** readily apparent from the floor plans submitted by the Applicant.

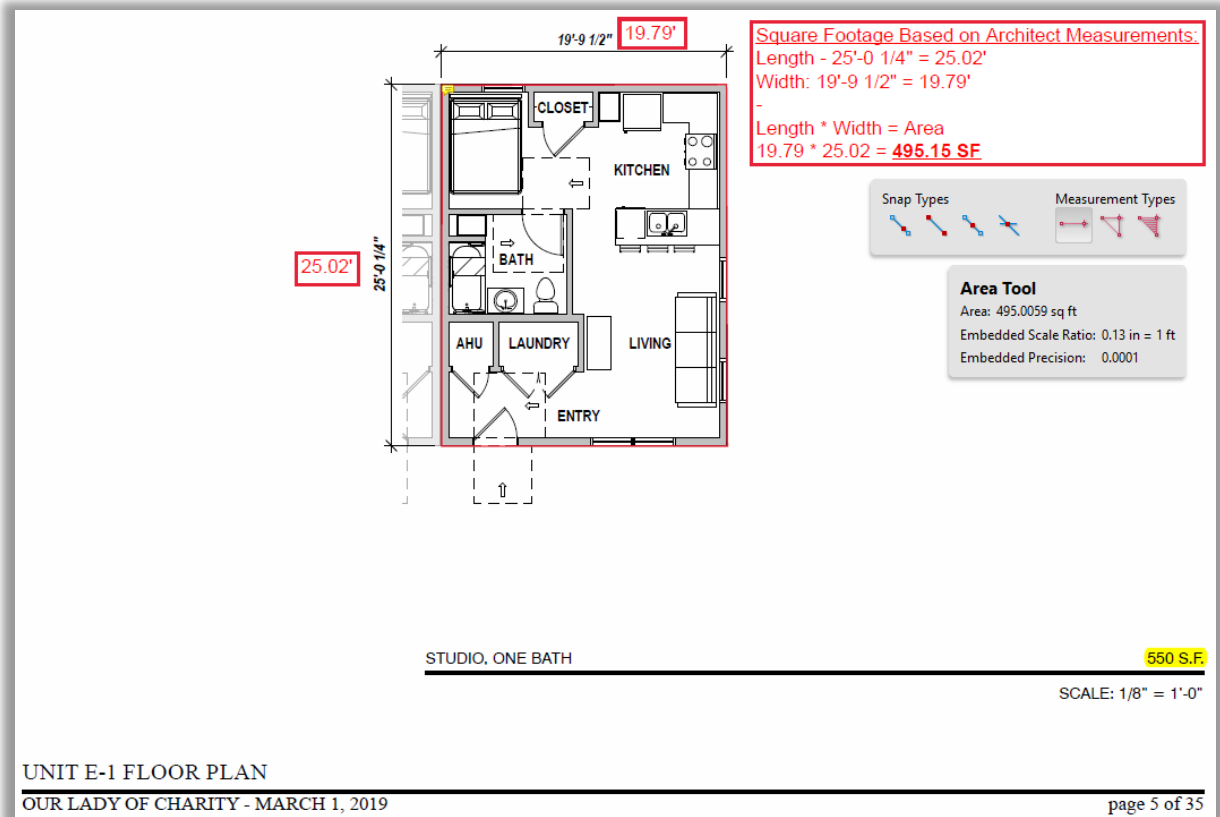
The definition for Adaptive Reuse within the QAP explicitly states "Adaptive Reuse Developments will be considered as New Construction" and therefore must meet the minimum square footage standards in order to qualify for points. While Rehabilitation projects are automatically granted these points, the definition for Rehabilitation further excludes Adaptive Reuse developments from this classification.

The following table lists the 10 Unit Types that fail to meet the square footage requirement threshold and should result in the Applicant being denied points under subsection §11.9(b)(1)(A).

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Unit Type	Square Footage Shown on Floor Plans	Square Footage Based on Architect's Dimensions	Square Footage Variance from Plans	Minimum Square Footage for Points	Square Footage Variance for Points
Unit E-1	550	495	-55	550	-55
Unit E-3	550	495	-55	550	-55
Unit E-4	550	533	-17	550	-17
Unit E-6	560	405	-155	550	-145
Unit E-7	550	536	-14	550	-14
Unit E-8	550	535	-15	550	-15
Unit E-10	550	538	-12	550	-12
Unit E-11	550	523	-27	550	-27
Unit C-1	1050	1026	-24	1050	-24
Unit C-2	1050	1046	-4	1050	-4

The following is the floor plan submitted to TDHCA by the Applicant for Unit Type E-1. Please note that the architect calculates the square footage at 550, suggesting that the unit meets the QAP minimum for scoring purposes. However, an analysis of the floor plan itself indicates that the architect is incorrect in their calculations. Multiplying the length times the width of the unit plan as provided by the architect yields the square footage of only 495 square feet, which is over 50 square feet less than claimed by the architect in their calculation. We have also used an Adobe Acrobat Area Tool to calculate square footage and that technique yielded 495 square feet which is also over 50 square feet less than claimed by the architect and Applicant.



This problem reoccurred systematically in the architectural drawings with 10 of the 18 Unit Types miscalculated by the architect. When calculated correctly, these Unit Types fail to meet the minimum square footage requirements of this subsection of the QAP, including one Unit Type that falls short by 146 square feet (over 26% less square feet than required).

In summary, 55.5% of the Unit Types (10 of 18) failed to provide adequate documentation demonstrating that they meet the minimum square footage requirement stipulated in subsection §11.9(b)(1)(A) and should be denied points.

We have included as Exhibit A our square footage analysis of the Unit Types referenced in the table above.

The more egregious issue may relate to the applicant's failure to meet the minimum square footage thresholds established in subsection §11.101(b)(6)(A). The following table illustrates three Unit Types that fail to meet this QAP mandated minimum and are potentially grounds for termination of the application (over 16% of the total Unit Types do not meet the QAP minimum square footage requirement):

Unit Type	Square Footage Shown on Floor Plans	Square Footage Based on Architect's Dimensions	Square Footage Variance from Plans	Minimum Square Footage for Threshold	Square Footage Variance for Threshold
Unit E-1	550	495	-55	500	-5
Unit E-3	550	495	-55	500	-5
Unit E-6	560	405	-155	500	-95

We performed one final analysis of the existing building footprint using the imbedded scale provided by the architect and then checked those measurements against Google Earth. This analysis indicated that the total square footage of all of the Units proposed (based on the dimensions stated in the floor plans) corresponds almost exactly to the square footage of the existing building footprint confirming that the proposed floor plans cannot simply be enlarged to resolve the issue. In addition, due to the historical tax credit aspect of the development and building structure, the Applicant does not have the flexibility to increase the footprint of the existing structures to remediate the deficiencies noted in this correspondence. We have attached our building footprint analysis as Exhibit B.

I appreciate your review and consideration of this matter. Please let me know if you have any questions or if I can provide any additional information.

Sincerely,

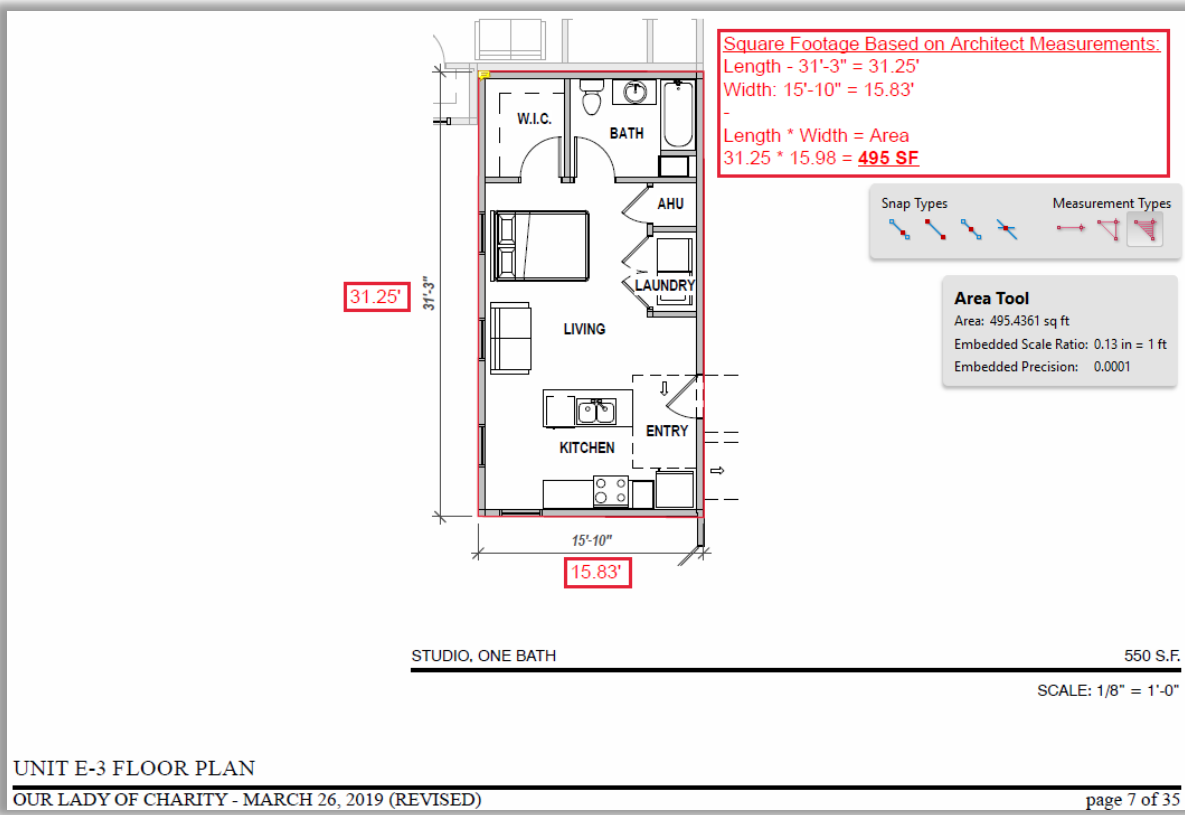
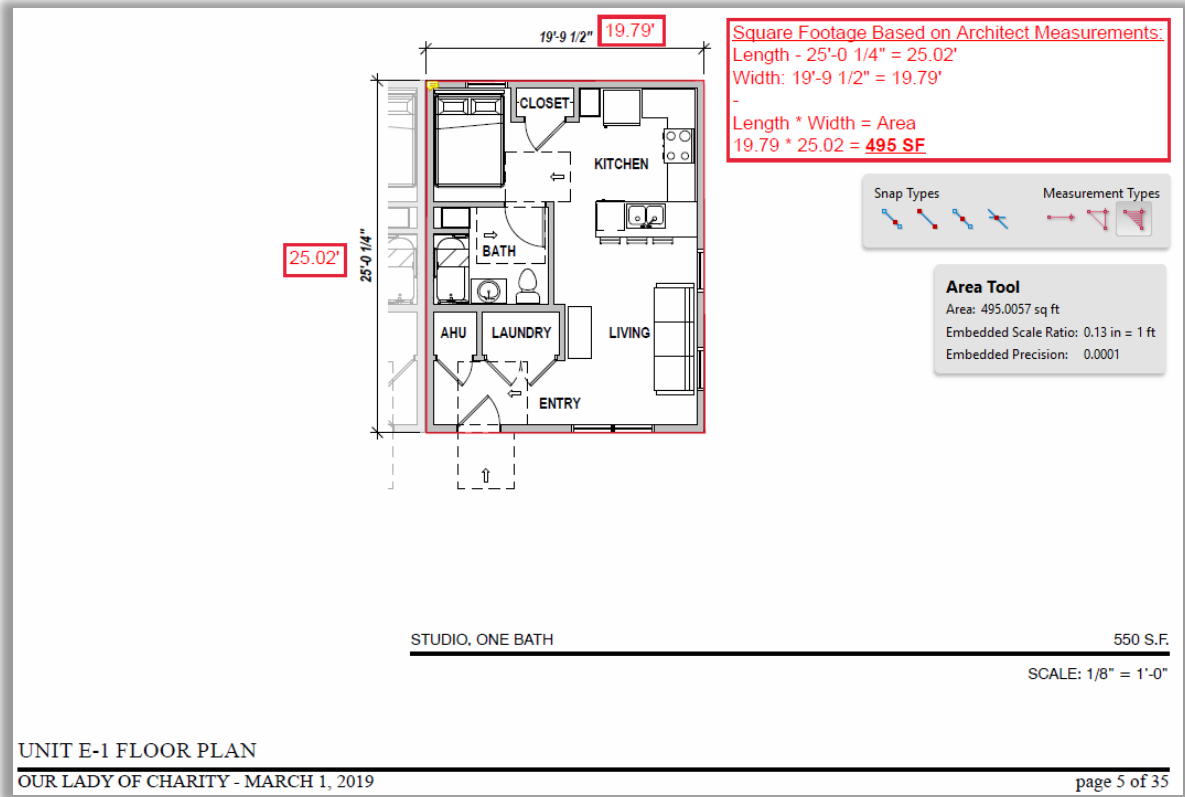


Enrique Flores
Member
Madhouse Development, LLC

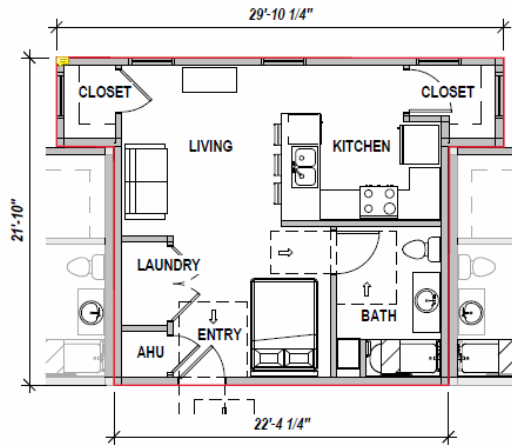
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Exhibit A

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Architect did not provide enough data to calculate the square footage without extrapolating measurements from the floor plan; however, utilizing the embedded scale and the Adobe Measurement Tool, the unit square footage determined to be 533 SF.

Snap Types:

Measurement Types:

Area Tool
 Area: 533.6015 sq ft
 Embedded Scale Ratio: 0.13 in = 1 ft
 Embedded Precision: 0.0001

STUDIO, ONE BATH

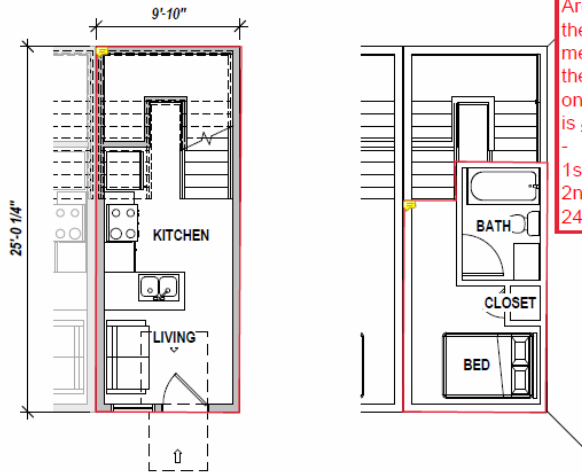
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-4 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

page 8 of 35



Architect did not provide enough data to calculate the square footage without extrapolating measurements from the floor plan; however, utilizing the embedded scale and allocating the stairway to only one floor, the actual square footage of the unit is **405 SF**.

1st floor - 246.38 SF
 2nd floor - 158.14 SF
 246.38 + 158.14 = 405

Snap Types:

Measurement Types:

Area Tool
 Area: 246.3782 sq ft
 Embedded Scale Ratio: 0.13 in = 1 ft
 Embedded Precision: 0.0001

Area Tool
 Area: 158.1395 sq ft
 Embedded Scale Ratio: 0.13 in = 1 ft
 Embedded Precision: 0.0001

STUDIO, ONE BATH

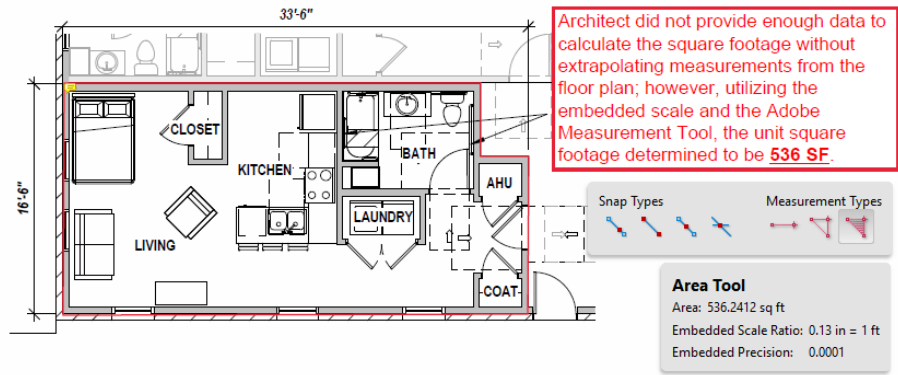
560 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-6 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

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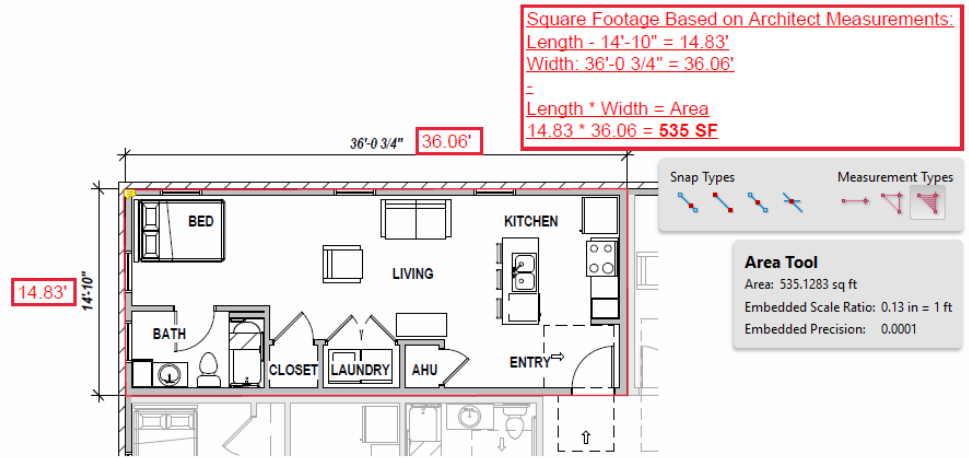


STUDIO, ONE BATH 550 S.F.
 NOTE: ACCESSIBILITY NOTES REFER TO FULLY ACCESSIBLE UNITS. SCALE: 1/8" = 1'-0"

UNIT E-7 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

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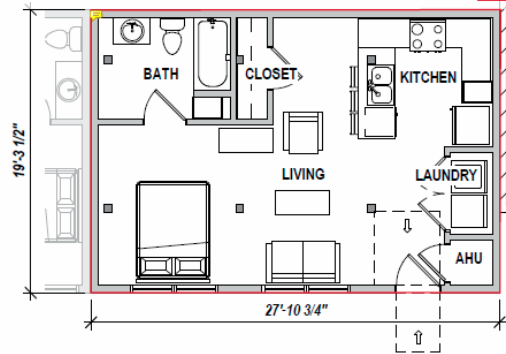
STUDIO, ONE BATH 550 S.F.
 SCALE: 1/8" = 1'-0"

UNIT E-8 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

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Square Footage Based on Architect Measurements:
 Length - 19'-3 1/2" = 19.29'
 Width: 27'-10 3/4" = 27.90'
 -
 Length * Width = Area
 19.29 * 27.90 = **538 SF**



Snap Types: [Icons for various snap types]

Measurement Types: [Icons for various measurement types]

Area Tool
 Area: 538.2382 sq ft
 Embedded Scale Ratio: 0.13 in = 1 ft
 Embedded Precision: 0.0001

STUDIO, ONE BATH

550 S.F.

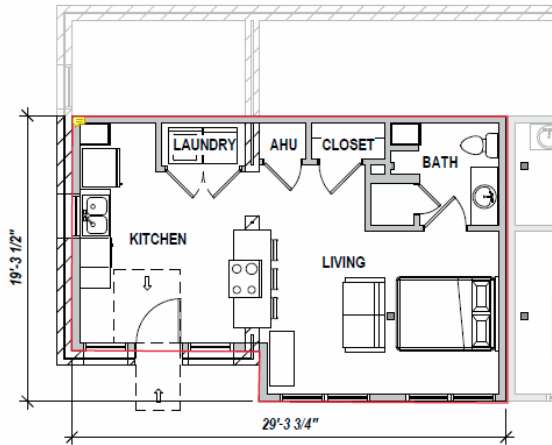
SCALE: 1/8" = 1'-0"

UNIT E-10 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

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Architect did not provide enough data to calculate the square footage without extrapolating measurements from the floor plan; however, utilizing the embedded scale and the Adobe Measurement Tool, the unit square footage determined to be **523 SF**.



Snap Types: [Icons for various snap types]

Measurement Types: [Icons for various measurement types]

Area Tool
 Area: 523.1916 sq ft
 Embedded Scale Ratio: 0.13 in = 1 ft
 Embedded Precision: 0.0001

STUDIO, ONE BATH

550 S.F.

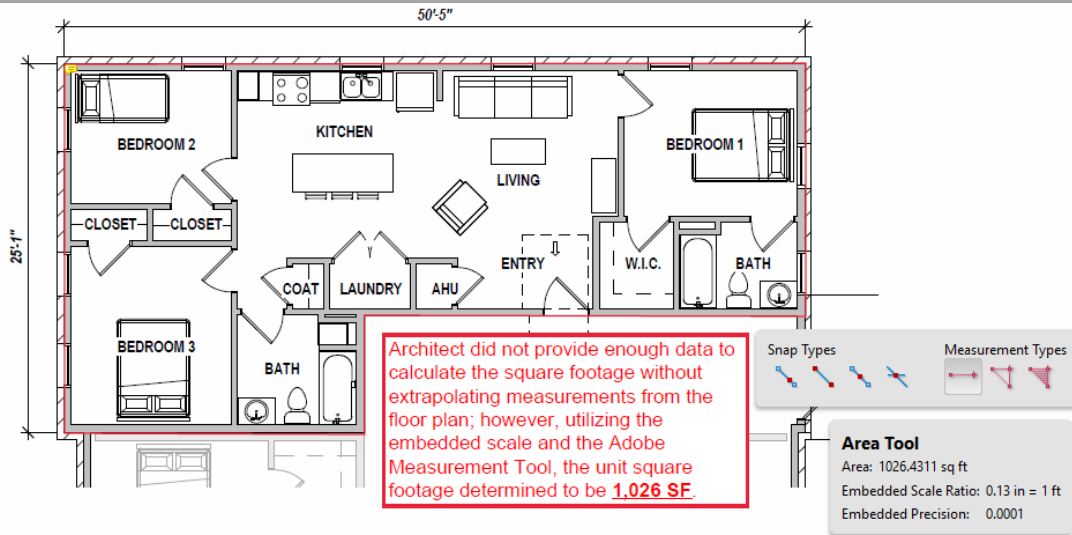
SCALE: 1/8" = 1'-0"

UNIT E-11 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

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THREE BEDROOM, TWO BATH

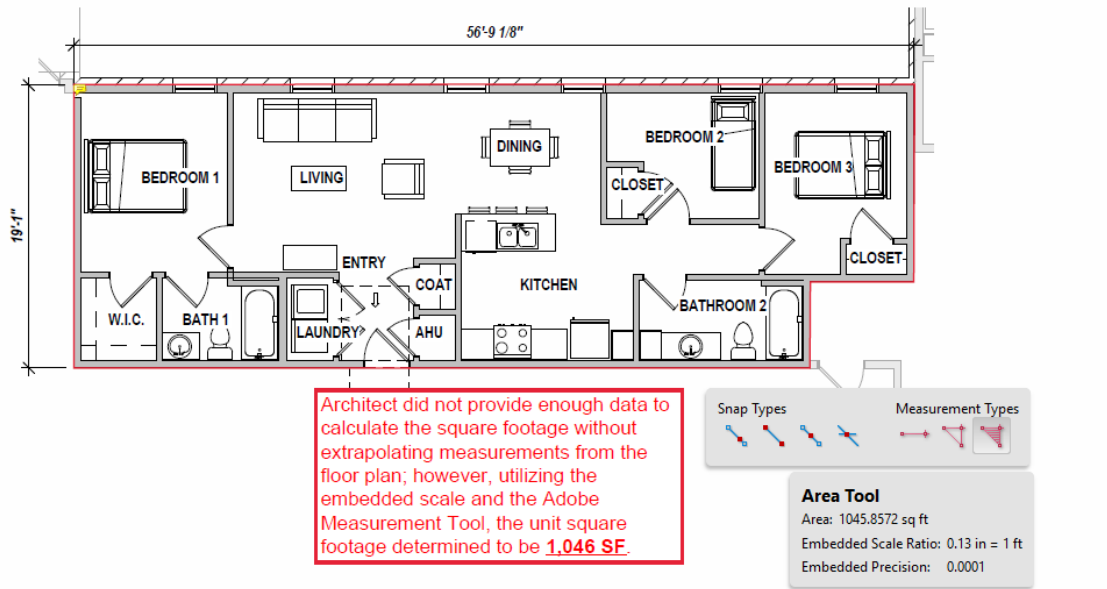
1,050 S.F.

SCALE: 1/8" = 1'-0"

UNIT C-1 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

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THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

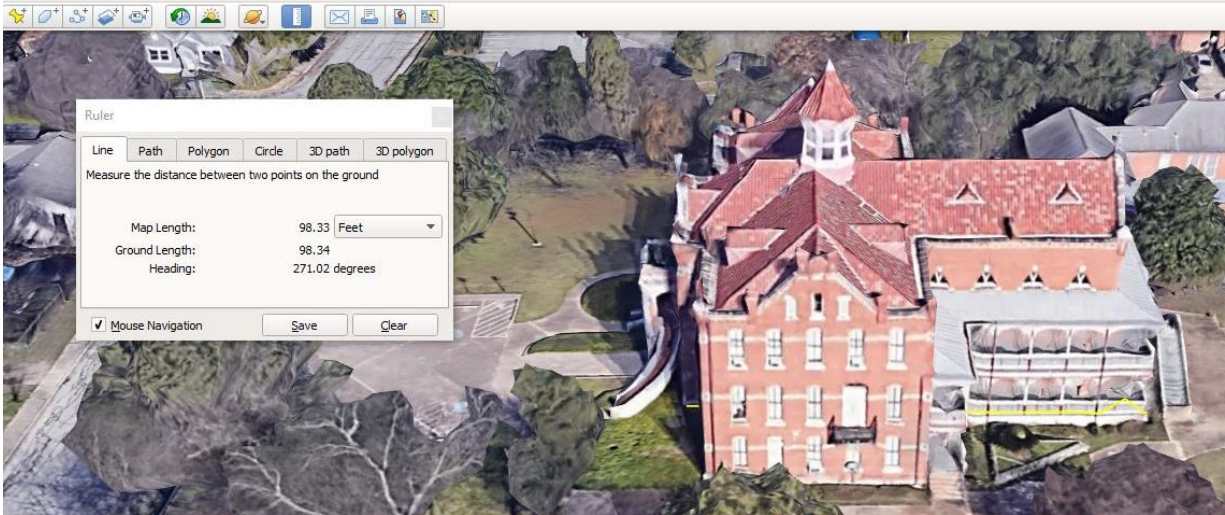
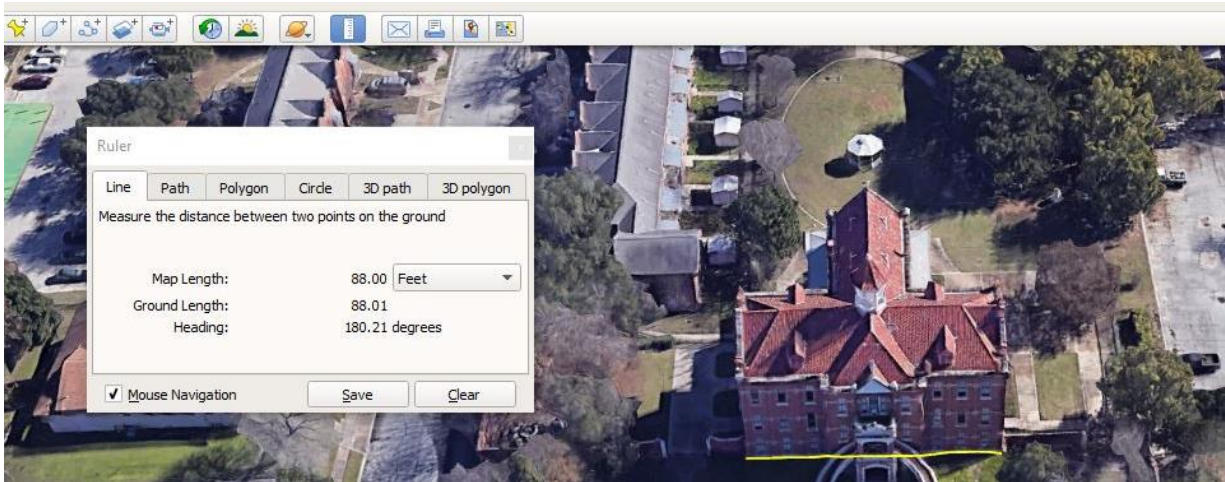
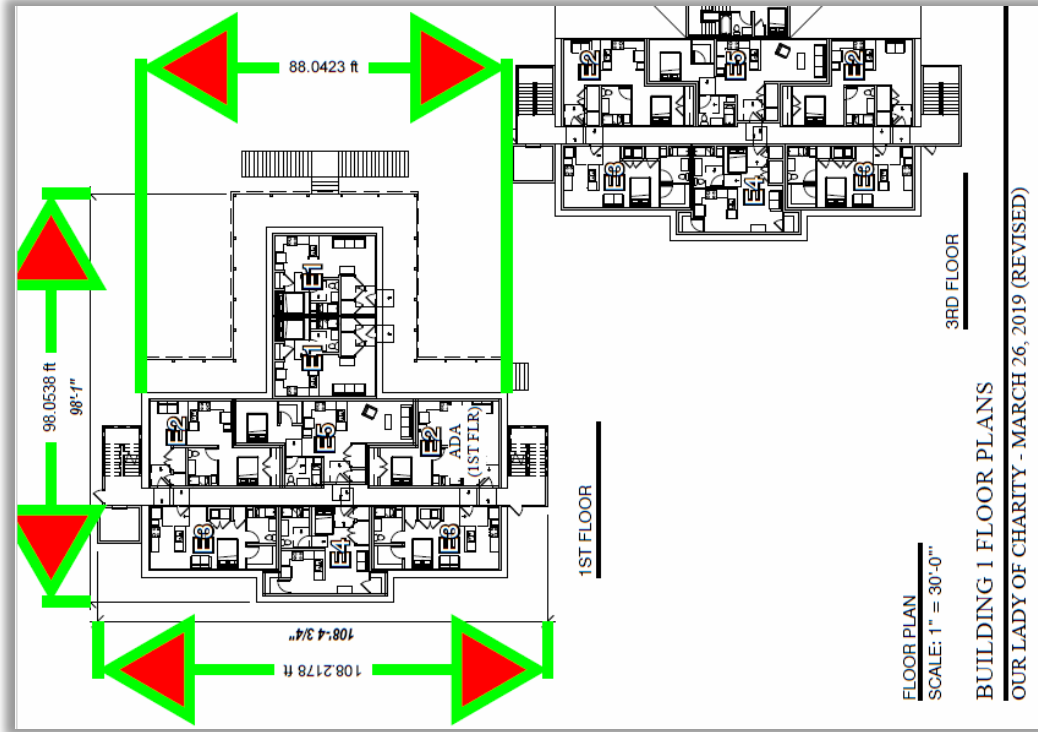
UNIT C-2 FLOOR PLAN

OUR LADY OF CHARITY - MARCH 1, 2019

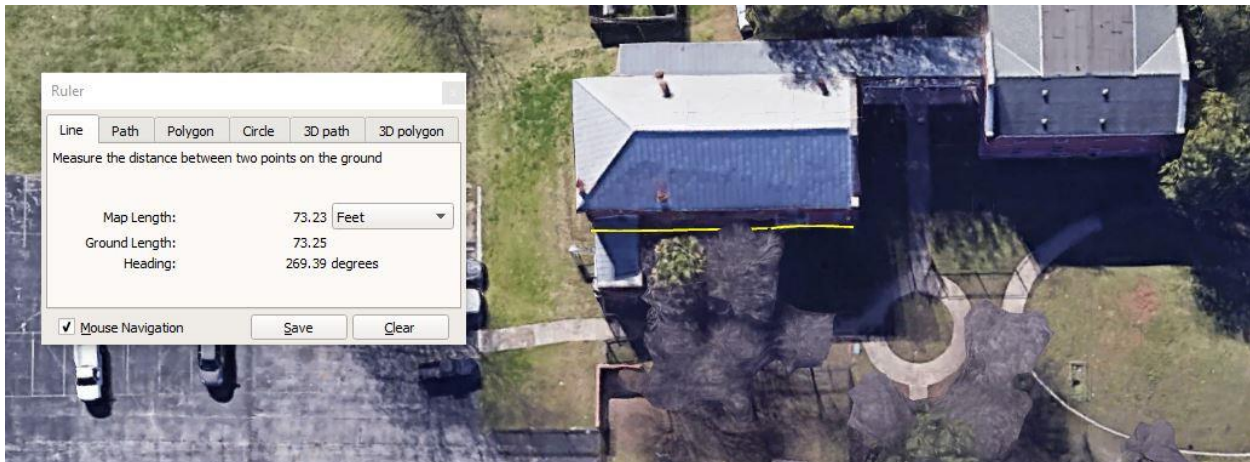
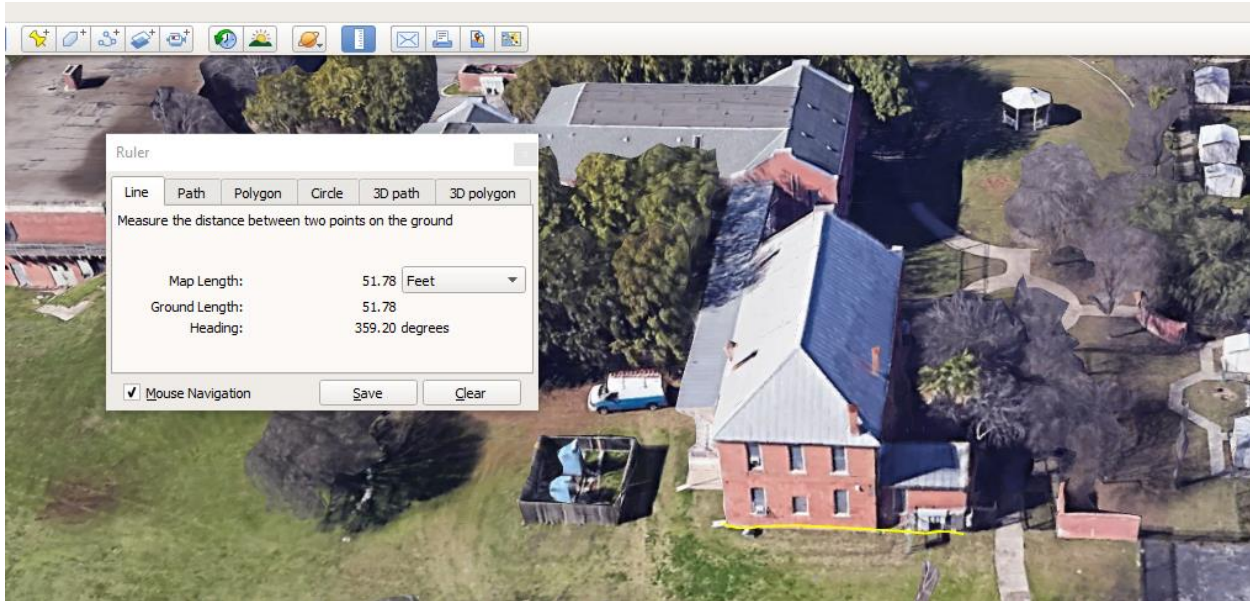
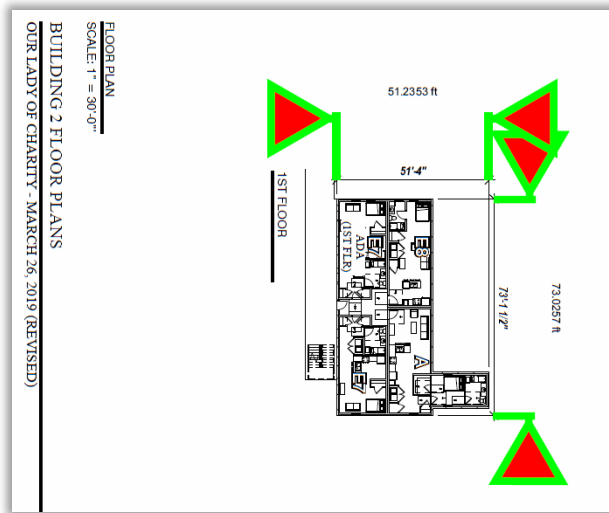
page 19 of 35

Exhibit B

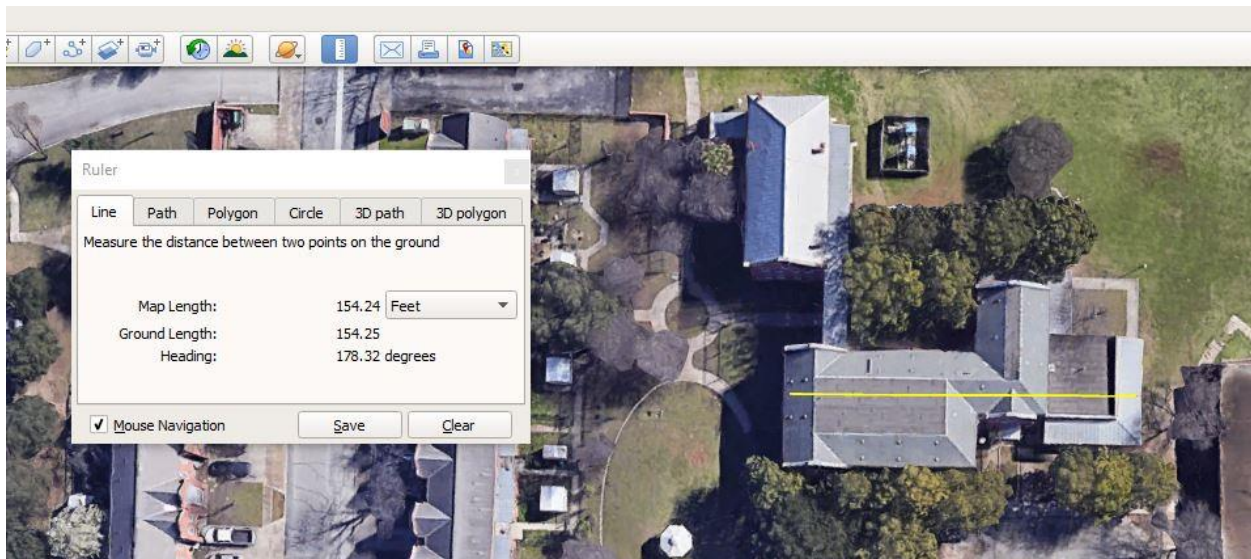
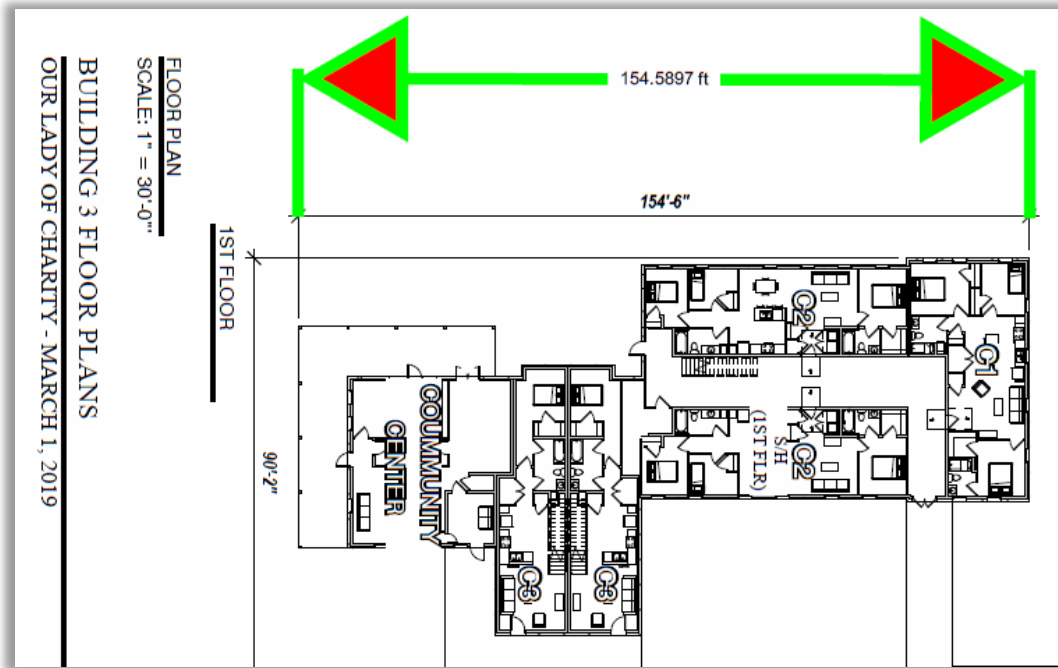
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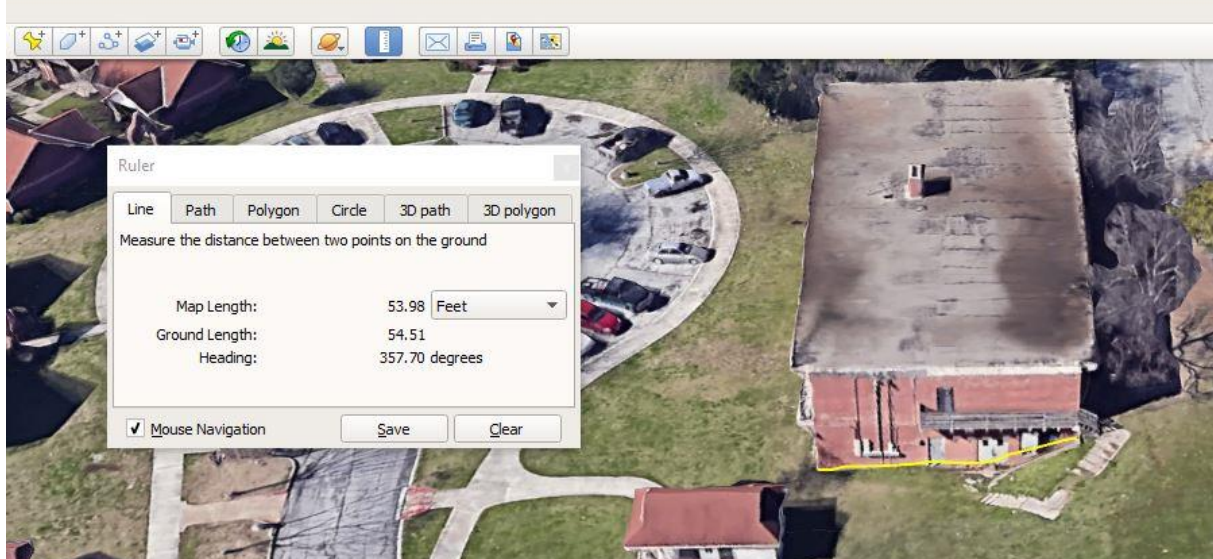
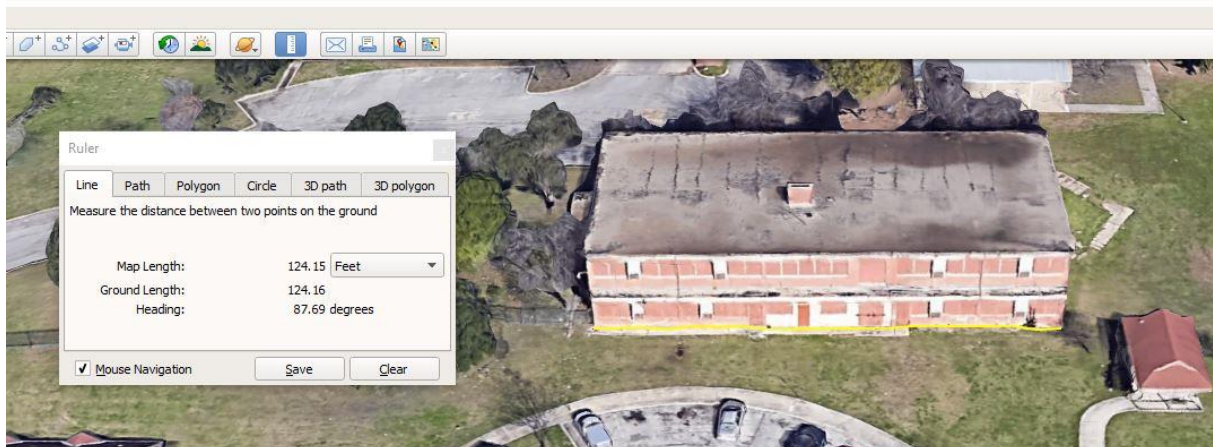
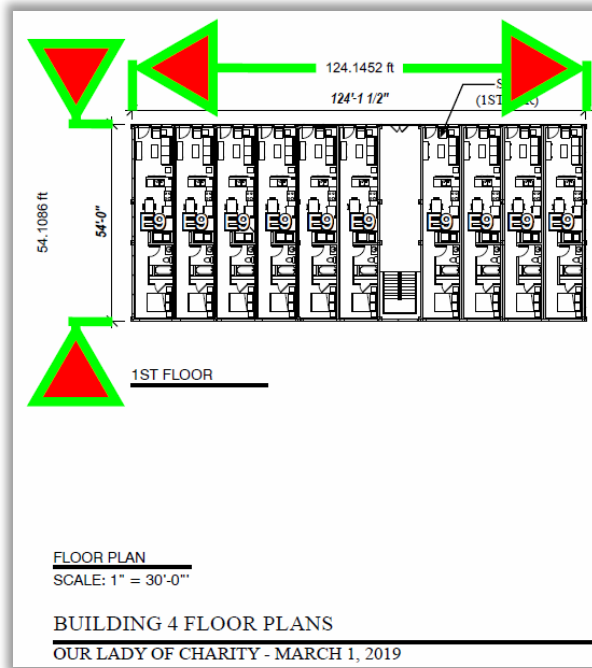


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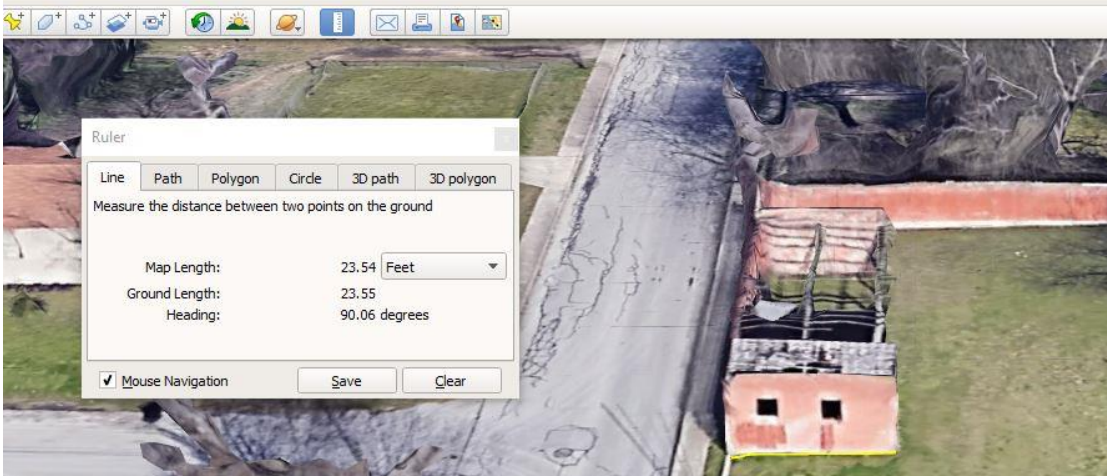
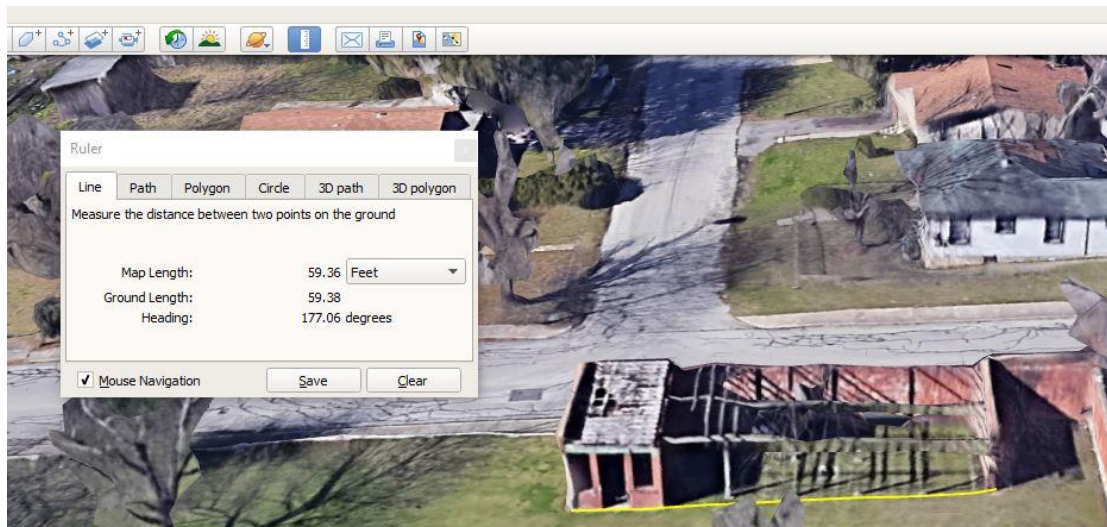
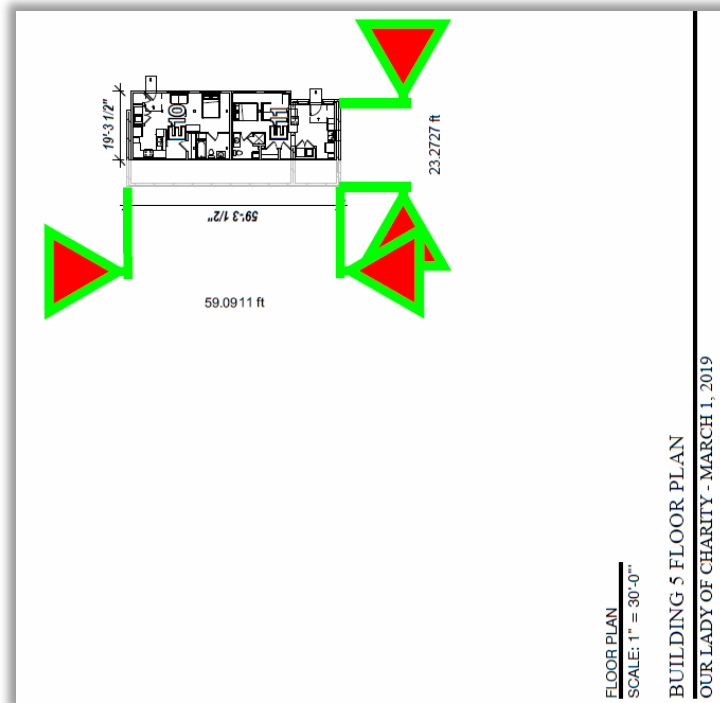


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19013 Our Lady of Charity Termination Notice



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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Sharon Thomason, Member
Leo Vasquez, Member

May 28, 2019

Writer's direct dial: 512/475-1676
Email: marni.holloway@tdhca.state.tx.us

Lucila Diaz
ARDC Charity, Ltd.
21260 Gathering Oak, Ste. 101
San Antonio, TX 78260

RE: STATUS OF 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19013 OUR LADY OF CHARITY, SAN ANTONIO

Dear Ms. Diaz:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. The Application proposes the Adaptive Reuse of an existing structure. Per 10 TAC §11.(d)(1) related to the definition of Adaptive Reuse, Adaptive Reuse Developments will be considered as New Construction. The Unit Floor Plans include three unit types that fail to meet the New Construction threshold for Unit sizes described in 10 TAC §11.101(b)(6)(A). Per the rule:

Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

Per the Unit plans submitted in the Application, the Units labeled E-1, E-3, and E-6 are zero bedroom "efficiency" Units and each is smaller than 500 square feet. Because the Application did not meet the

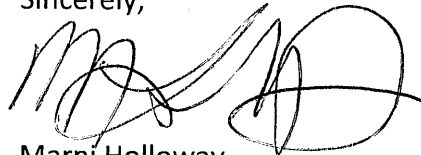


threshold requirement for Unit sizes, the Application is terminated, pending the Applicant's ability to appeal.

An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §11.902 of the 2019 QAP. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instructions on the appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at marni.holloway@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marni Holloway', written in a cursive style.

Marni Holloway
Director of Multifamily Finance

19013 Our Lady of Charity

Scoring Notice



MULTIFAMILY FINANCE PRODUCTION DIVISION
Housing Tax Credit Program - 2019 Application Round
Scoring Notice - Competitive Housing Tax Credit Application

Lucila Diaz

Phone #: (210) 408-3152

Email: lucila@franklindev.net

Second Email: ajcarpen@gmail.com

Date: May 29, 2019

**THIS NOTICE WILL ONLY BE
TRANSMITTED VIA EMAIL**

**RE: 2019 Competitive Housing Tax Credit (HTC) Application for Our Lady of Charity Apartments,
TDHCA Number: 19013**

The Texas Department of Housing and Community Affairs has completed its program review of the Application referenced above as further described in the 2019 Qualified Allocation Plan (QAP). This scoring notice provides a summary of staff's assessment of the application's score. The notice is divided into several sections.

Section 1 of the scoring notice provides a summary of the score requested by the Applicant followed by the score staff has assessed based on the Application submitted. You should note that six scoring items are not reflected in this scoring comparison but are addressed separately.

Section 2 of the scoring notice includes each of the six scoring criteria for which points could not be requested by the Applicant in the application self-score form and include: §11.9(c)(8) Readiness to Proceed in Disaster Impacted Counties, §11.9(d)(1) Local Government Support, §11.9(d)(4) Quantifiable Community Participation, §11.9(d)(5) Community Support from State Representative, §11.9(d)(6) Input from Community Organizations, and §11.9(d)(7) Concerted Revitalization Plan.

Section 3 provides information related to any point deductions assessed under §11.9(f) and/or §11.201(7)(B) of the QAP.

Section 4 provides the final cumulative score in bold.

Section 5 includes, as applicable, notes and an explanation of any differences between the requested and awarded score, as well as any penalty points assessed.

The scores provided herein are merely informational at this point in the process and may be subject to change. For example, points awarded under §11.9(e)(4) "Leveraging of Private, State, and Federal Resources", 11.9(b)(1)(A) "Unit Sizes", 11.9(b)(1)(B) "Unit and Development Features", 11.9(c)(1) "Income Levels of Tenants", 11.9(c)(2) "Rent Levels of Tenants", 11.9(e)(1) "Financial Feasibility", 11.9(e)(3) "Pre-Application Participation", and may be adjusted should the underwriting review result in changes to the Application that would affect these scores. If a scoring adjustment is necessary, staff will provide the Applicant a revised scoring notice.

Be further advised that if the Applicant failed to properly disclose information in the Application that could have a material impact on the scoring information provided herein, the score included in this notice may require adjustment and/or the Applicant may be subject to other penalties as provided for in the Department's rules.

This scoring notice is provided by staff at this time to ensure that an Applicant has sufficient notice to exercise any appeal process provided under §11.902 of the 2019 QAP. All information in this scoring notice is further subject to modification, acceptance, and/or approval by the Department's Governing Board. If the score of an Application changes, a revised scoring notice will be provided to the Applicant.



MULTIFAMILY FINANCE PRODUCTION DIVISION
Housing Tax Credit Program - 2019 Application Round
Scoring Notice - Competitive Housing Tax Credit Application

Page 2 of Final Scoring Notice: 19013, Our Lady of Charity Apartments

Section 1:

Score Requested by Applicant (Not including points for §11.9(c)(8) or (d)(1), (4), (5), (6) or (7) of the 2019 QAP):	123
Score Awarded by TDHCA (Not including points for §11.9(c)(8) or (d)(1), (4), (5), (6) or (7) of the 2019 QAP):	111
Difference between Requested and Awarded:	12

Section 2:

Points Awarded for §11.9(c)(8) Readiness to Proceed:	0
Points Awarded for §11.9(d)(1) Local Government Support:	14
Points Awarded for §11.9(d)(4) Quantifiable Community Participation:	4
Points Awarded for §11.9(d)(5) Community Support from State Representative:	8
Points Awarded for §11.9(d)(6) Input from Community Organizations:	4
Points Awarded for §11.9(d)(7) Concerted Revitalization Plan:	7

Section 3:

Points Deducted for §11.9(f) and/or §11.201(7)(B) of the QAP:	0
---	---

Section 4:

Final Score Awarded to Application by Department staff (Including all points):	148
---	------------

Section 5:

Notes and explanation for difference between points requested and points awarded by the Department, as well as penalties assessed:

§11.9(b)(1)(A) Unit Sizes. The Application requested three (6) points but is eligible for zero (0) points under this item because ten (10) Unit types do not meet the minimum scoring threshold. (Requested 6, Awarded 0)

§11.9(e)(3) Pre-application Participation. The Application requested six (6) points but is not eligible for points under this item because the Application final score (inclusive of only scoring items reflected on the self score form) varies by more than four (4) points from what was reflected in the preapplication self score. (Requested 6, Awarded 0)

Restrictions and requirements relating to the filing of an appeal can be found in §11.902 of the 2019 QAP. If you wish to appeal this scoring notice, you must file your appeal with the Department no later than 5:00 p.m. Austin local time, Wednesday, June 5, 2019. If an appeal is denied by the Executive Director, an Applicant may appeal to the Department's Board.

In an effort to increase the likelihood that Board appeals related to scoring are heard at the Board meeting, the Department has provided an Appeal Election Form for all appeals submitted to the Executive Director. In the event an appeal is denied by the Executive Director, the Applicant is able to request that the appeal automatically be added to the Board agenda.

If you have any concerns regarding potential miscalculations or errors made by the Department, please contact Sharon Gamble at (512) 936-7834 or by email at <mailto:sharon.gamble@tdhca.state.tx.us>.

Sincerely,

Sharon D. Gamble

Sharon D. Gamble
 Competitive HTC Program Administrator

Termination Appeal Documents

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BARRY J. PALMER

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(713) 890-3944

June 3, 2019

By Email to david.cervantes@tdhca.state.tx.us
David Cervantes, Acting Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711-3941

RE: Appeal of Termination Notice for Our Lady of Charity, TDHCA #19013

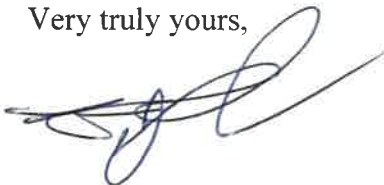
Dear Mr. Cervantes:

An important project in San Antonio anticipated to be funded with a combination of Texas Historic Tax Credits and 9% Low-Income Housing Tax Credits has received a Termination Notice from TDHCA Staff based upon unit sizes for Efficiency apartments not meeting the TDHCA's minimum Net Rentable Area ("NRA"). In reality, the issue is how a historic building that is constructed with solid masonry walls can meet the minimum NRA standards using the QAP's definition of Net Rentable Area. In fact – it cannot, because the solid masonry walls of the historic building being converted to residential usage are constructed without studs, and the definition of Net Rentable Area uses studs to establish the area of a unit.

Please do not let the Our Lady of Charity development fail due to this gap in the QAP!

In the recent past the TDHCA has granted Housing Tax Credits to another historic Adaptive Re-Use – The Conrad Lofts in Plainview (#16034) was a Hilton Hotel built in 1929 that has been converted to residential use. There the NRA was calculated to the outside of exterior of solid masonry walls built without studs. We urge you to use The Conrad Lofts as establishing an appropriate precedent for calculating NRA when stud construction does not exist.

Very truly yours,



Barry J. Palmer

9 Greenway Plaza, Suite 1000 | Houston, Texas 77046
Phone: 713-651-0111 | Fax: 713-651-0220
Web: www.coatsrose.com

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June 4, 2019

David Cervantes, Acting Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711-3941

RE: Appeal of Termination Notice for Our Lady of Charity, TDHCA #19013

Mr. Cervantes:

Please accept this letter as an appeal of the termination of 2019 Competitive HTC Application 19013 for Our Lady of Charity, San Antonio, per Termination Notice received on May 28, 2019. Our Lady of Charity is a historic adaptive reuse of a convent, school and carriage building in downtown San Antonio, demolition of several non-historic structures and replacement with new construction residential buildings. Staff made a determination that the units would not meet threshold requirements as described in 10 TAC § 11.101(b)(6)(A) of the QAP. We wish to provide clarification regarding calculation of net rentable area, which may have been misinterpreted due to technical and design elements presented in the drawings.

The Termination Notice states:

The Unit Floor Plans include three unit types that fail to meet New Construction threshold for Unit sizes described in 10 TAC § 11.101 (b)(6)(A). ... Per the Unit plans submitted in the Application, the Units labeled E-1, E-3 and E-6 are zero bedroom "efficiency" Units and each is smaller than 500 square feet.

The development is an Adaptive Re-use project. The QAP requires that Adaptive Re-use projects be classified as New Construction. Therefore, Net Rentable Area should be calculated as follows:

(82) Net Rentable Area (NRA) – The Unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the outside of the studs of a Unit or to the middle of walls in common with other Units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical

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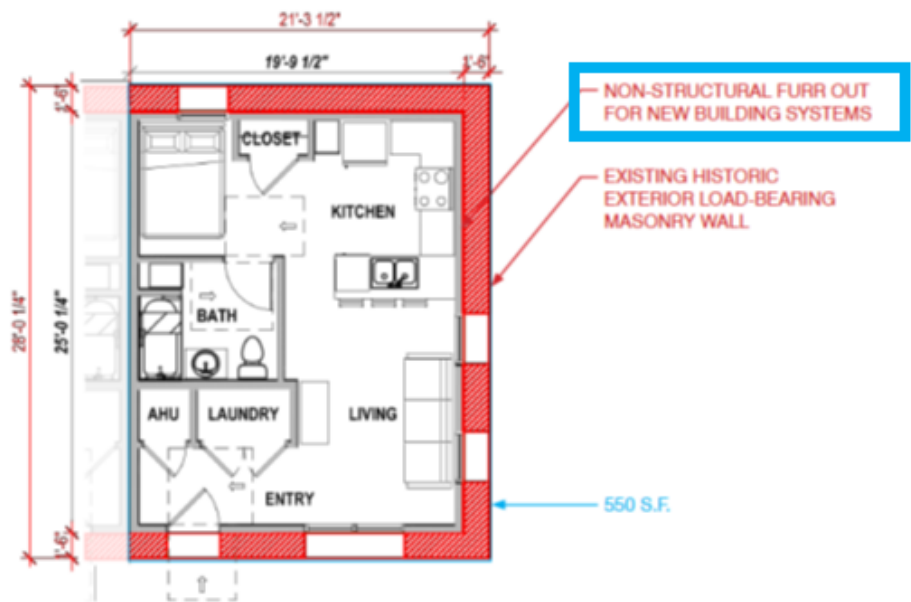


closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

Our Clarified Response

In our response to the RFAD provided by TDHCA Staff dated May 6, 2019, we provided details regarding the existing walls. Per the Unit Plans submitted in the Application, the Units labeled E-1, E-3 and E-6 are located only in Building #1 – which is the historic convent building. The plans for these Units (along with the other units within the existing historic structures) as submitted in the Application showed **non-structural “furr out” walls**. For an example, see image 1 below.

Image 1



STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

The non-structural furr out wall was intended to serve only as a channel for any plumbing or electrical systems, if in fact such channels would be required, and was clearly labeled as such in the deficiency response. In no place was the furr out wall labeled as a stud wall. This was never intended to be a structural wall with “studs”, but rather be a furring system that would allow for these mechanical and plumbing systems to be concealed, if desired. We have confirmed with the Architect that this mechanism is NOT needed per IBC Code and it has been removed from the Unit plans to avoid the confusion this furr out or channel presented.

TDHCA staff indicated in their supplemental report to the Board on May 21, 2019, that NRA is measured to the outside of the “studs” in a Unit, or to the middle of walls shared with other Units. Due to the existing design elements of this particular historic building, the exterior masonry wall (what the Architect referred to as the “structural wall” or the “load bearing wall” in the previous response) is serving the same purpose as any “stud” wall would serve in a New Construction development. In fact, there can be no other dimension that can be used, as the only wall element that exists is the exterior masonry wall - there are no “studs.” The calculation of the NRA has been consistent throughout this process – in the initial application and in the subsequent deficiency response. The QAP and Multifamily Rules do not provide clear language and/or guidance in determining NRA for historic buildings nor do they provide for necessary preservation of existing load bearing walls in historic projects.

Alamo Architects, the architects for this Project, have worked to design a qualifying and sensitive adaptation of these historic buildings. Because the QAP and Rules do not provide guidance for calculating the NRA for an historic building with solid masonry walls, Alamo Architects used the methodology accepted by the TDHCA in the recent past in connection with #16034 Conrad Lofts, an adaptive reuse of an original Hilton Hotel in Plainview, Texas. Conrad Lofts was awarded tax credits in 2016 on the basis of NRAs calculated to the exterior of solid masonry walls that are not shared walls. That is the methodology used by Alamo Architects throughout this process.

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The minimum NRA for efficiency units pursuant to 10 TAC §11.101(b)(6)(A) is 500 square feet. The E-1 and E-3 Units each have 550 square feet, using the described methodology, and the E-6 Unit has 560 square feet of NRA. These NRAs qualify as to eligibility and as to points under §11.9(b)(1)(A)(i), as follows:

<u>EFFICIENCY UNIT</u>	<u>NRA</u>
Minimum Required	500 sf
Qualified for Points	550 sg
Unit E-1 Actual	550 sf
Unit E-3 Actual	550 sf
Unit E-6 Actual	560 sf

Please accept the attached supplemental information from our Architect clarifying the purpose of the furr out and a unit floor plan example of from #16034 The Conrad Lofts, which received a 9% Housing Tax Credit award in 2016 using a methodology that measures the NRA to the “outside of the masonry wall.” This approach is consistent with that used by Alamo Architects in designing the Units for the Our Lady of Charity historical building. We submit that it is a more appropriate process for assessing NRA in historic adaptive re-use, where solid masonry walls are present and stud construction is not.

Conclusion

We can understand that the language submitted in our Administrative Deficiency Response may have caused a misunderstanding of the technical function of the furr-out/channel. Previous documentation submitted in the Administrative Deficiency Response shows drawings were revised to show the existing masonry walls and how the NRA calculations met the threshold and scoring requirements. The E-1, E-3 and E-6 Units as submitted in the original Application and supplemented in the Administrative Deficiency Response **do** meet **both** the threshold unit size requirements under 10 TAC §11.101(b)(6)(A) and the minimum square footage requirements for points under §11.9 (b)(1). Based on the facts presented, we respectfully request your consideration in re-instating our

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Application and then subsequently granting the points originally requested is appropriate and allowed under the QAP rules.

Thank you,

Timothy Alcott,
Real Estate & Legal Services Officer

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facsimile 210.227.9457

June 3, 2019

Sharon D. Gamble MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St.
Austin, TX 78701

RE: Response to staff comments

Ms. Gamble,

Please see responses below.

1. Inside versus outside face of stud

Staff response:

“for the net rentable area of the Unit, the measurement must be made to the outside of the stud, i.e. the surface of the stud where the interior wall would affix.”

The surface of the stud where the interior wall would affix is the inside face. The outside face is that which faces out from the unit.

Refer to exhibit 1: inside versus outside face of stud

2. Furring strips to be removed

Our drawings show furring strips affixed to the existing historic walls for convenience of installation of new plumbing and electrical per Exhibit 2, below. It seems this might have been interpreted as a “stud wall”. We will not use furring strips and will instead utilize alternate methods for new plumbing and electrical service as necessary.

Refer to Exhibit 2: example of furring strips

Refer to Exhibit 3: Before and after plans showing furring removed

3. Calculating Net Rentable to outside face of existing wall

Many historic buildings subject to adaptive reuse do not have stud walls so it is impossible to calculate the net rentable square footage through a strictly literal reading of “outside of the studs” in the QAP definition. In standard wood frame construction, net square footage is calculated to the outside face of the stud and excludes masonry veneers and other material affixed to it. In the past, for adaptive reuse projects, TDHCA has recognized that when there is no stud wall, the existing wall, whatever it’s composition (excluding veneers) meets the definition of “stud wall”. Please see example unit plan below from previous award:

Refer to Exhibit 4: previously successful award where square footage was calculated to exterior of existing masonry wall: Conrad Lofts a 2016 9% award.

Thank you,



Jim Bailey
Alamo Architects



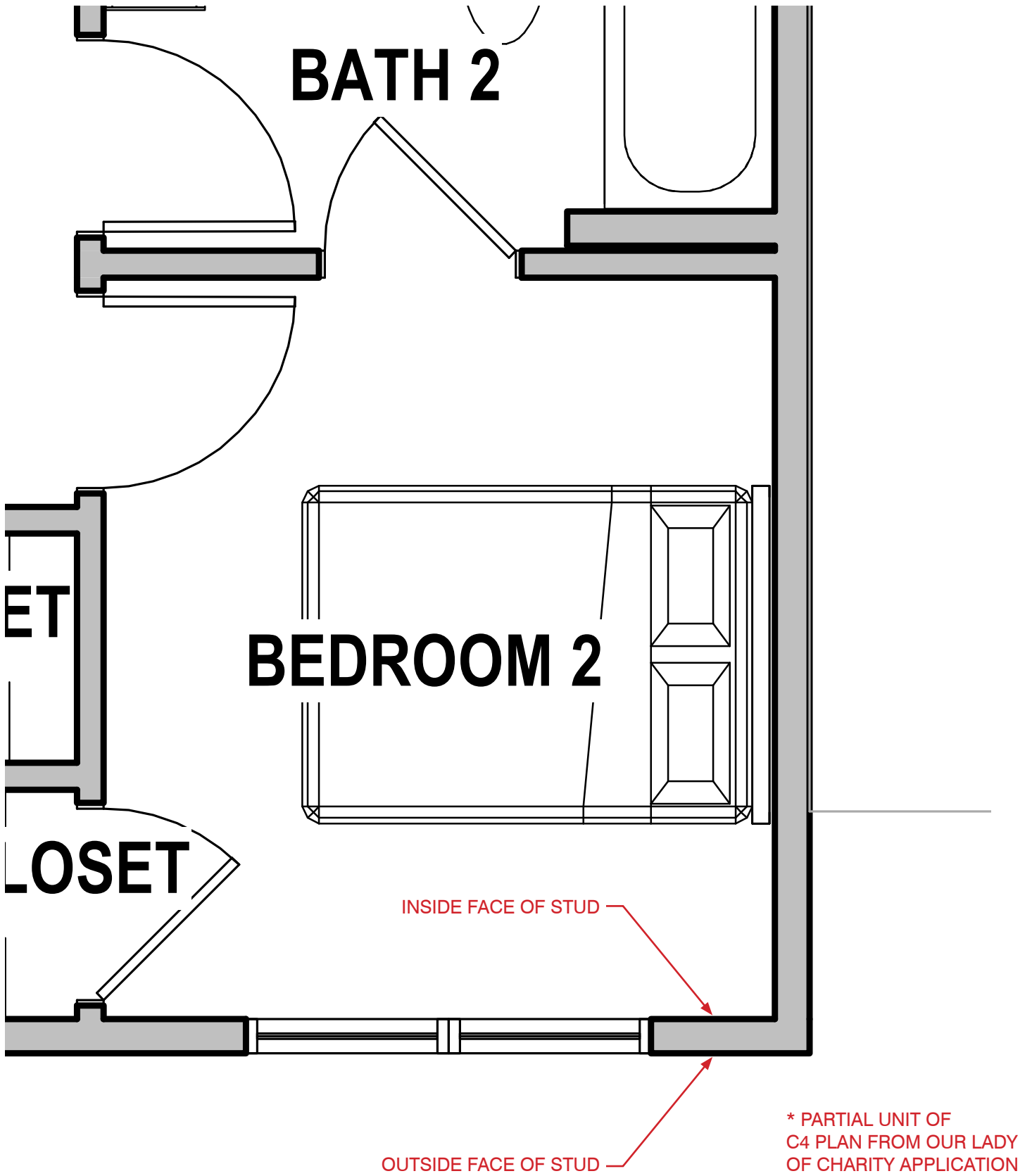


EXHIBIT 1
Inside versus outside face of stud

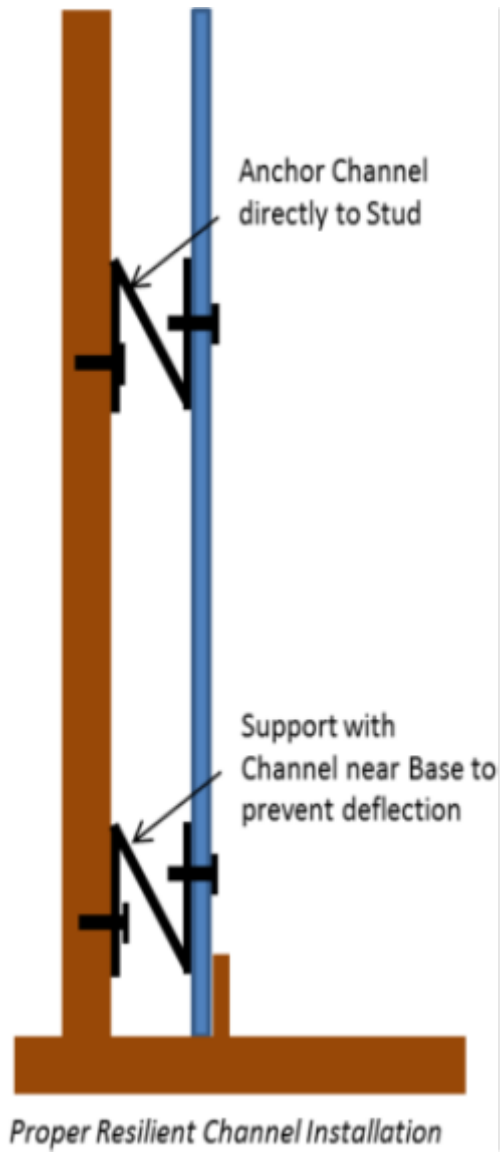
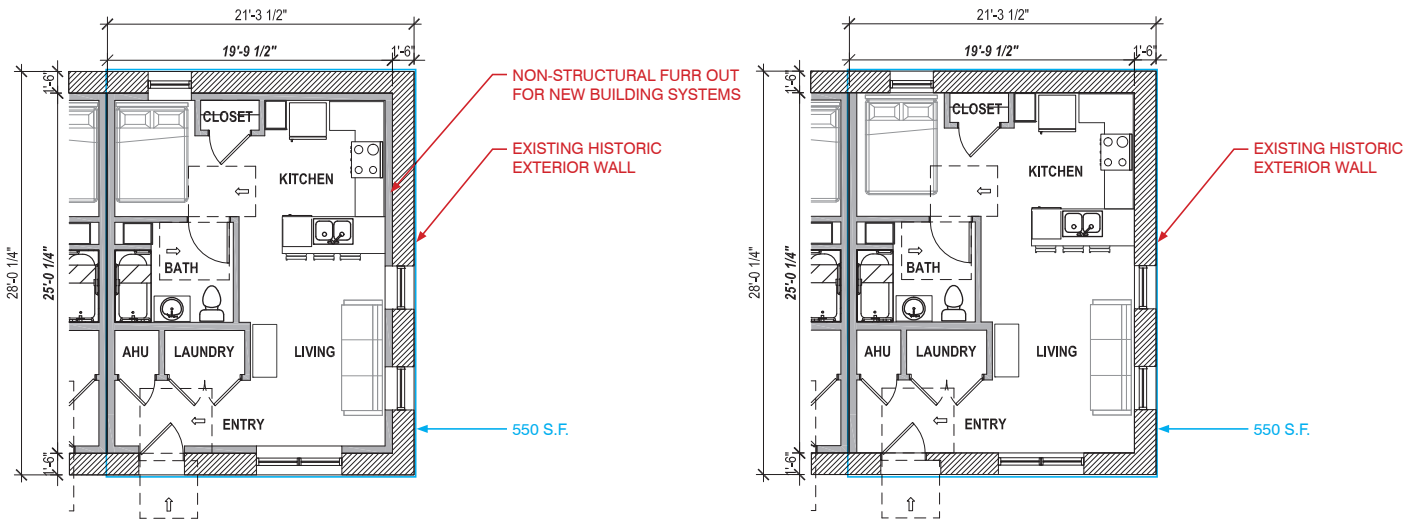


EXHIBIT 2
Example of furring strips

- BEFORE -

- AFTER -



STUDIO, ONE BATH

550 S.F.

SCALE: NTS

UNIT E-1 FLOOR PLAN

OUR LADY OF CHARITY

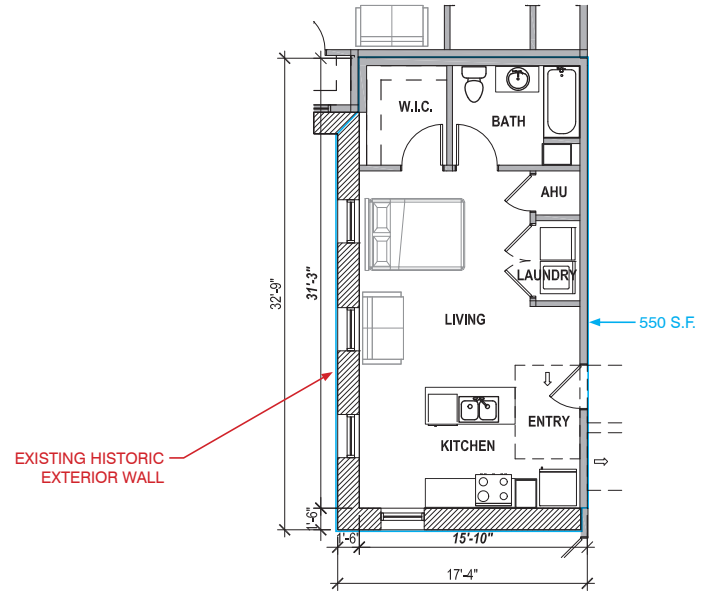
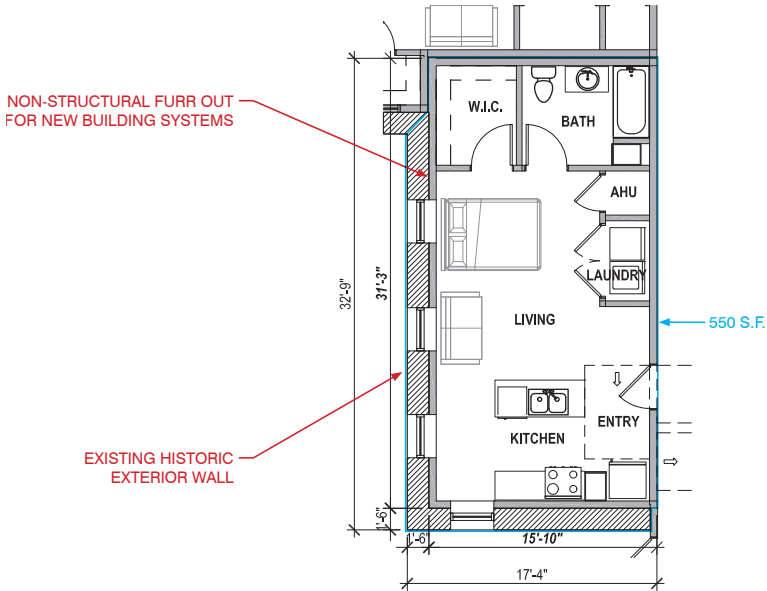
page 5 of 35

EXHIBIT 3A

Before and after plans showing furring removed

- BEFORE -

- AFTER -



STUDIO, ONE BATH

550 S.F.

SCALE: NTS

UNIT E-3 FLOOR PLAN

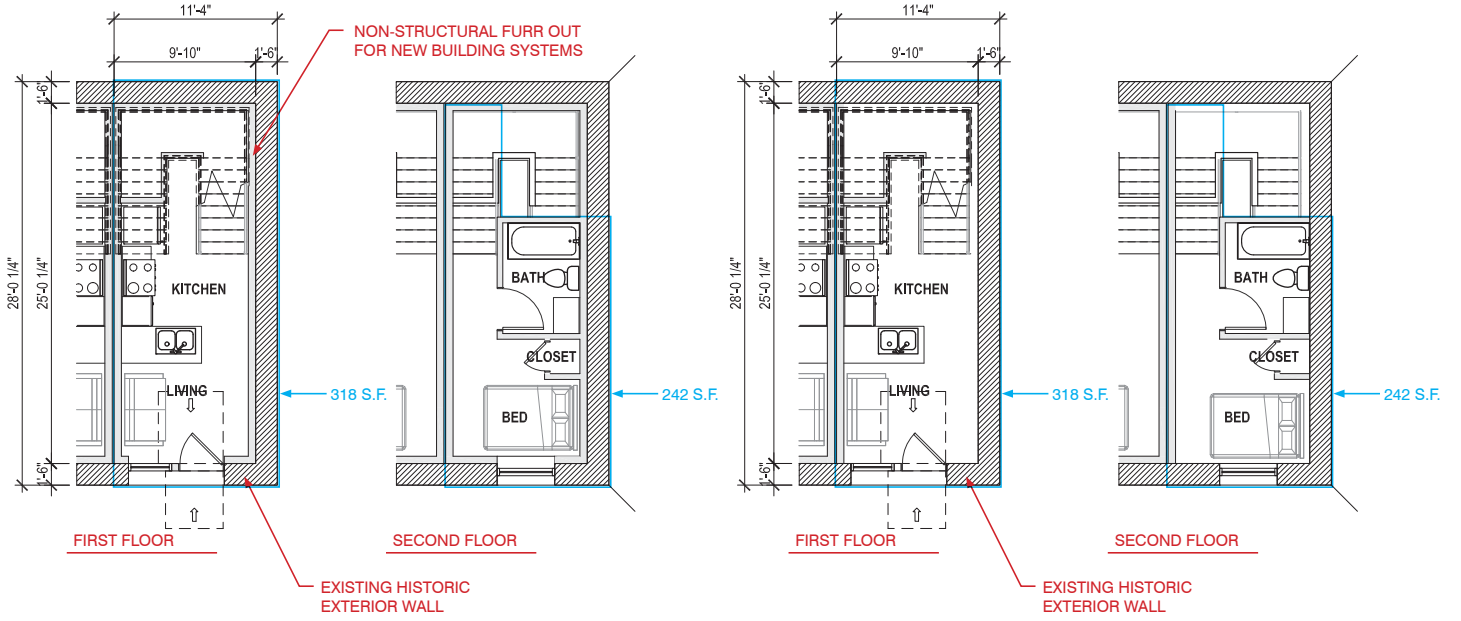
OUR LADY OF CHARITY

EXHIBIT 3B

Before and after plans showing furring removed

- BEFORE -

- AFTER -



STUDIO, ONE BATH

560 S.F.

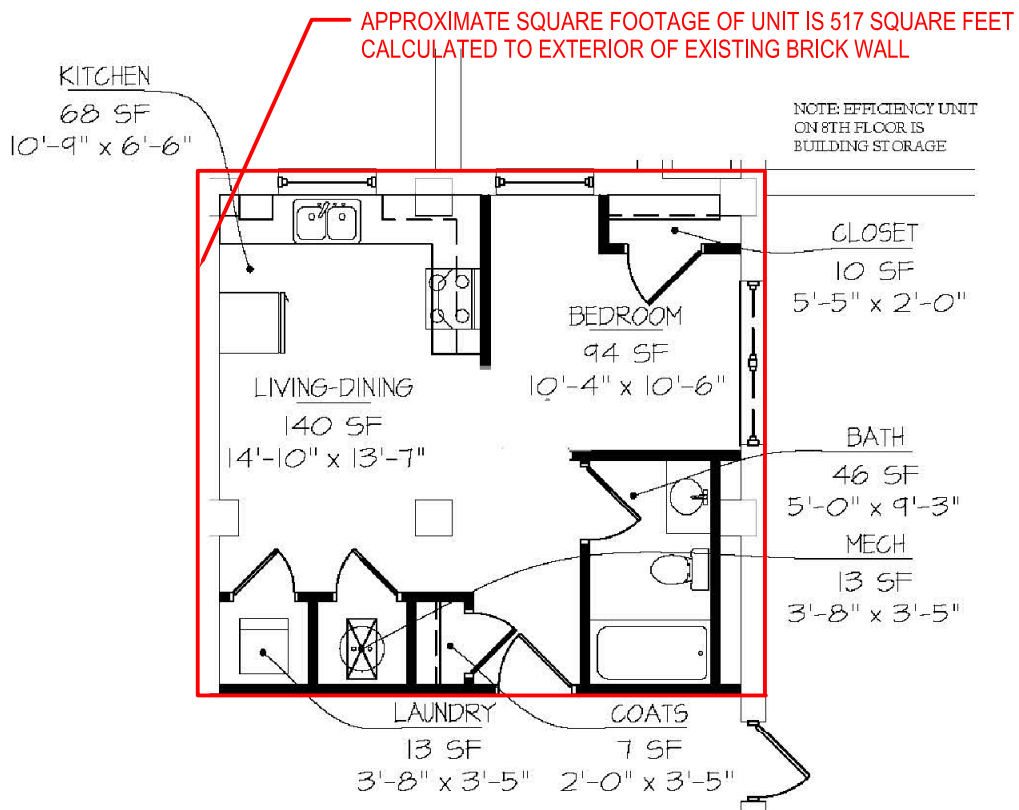
SCALE: NTS

UNIT E-6 FLOOR PLAN

OUR LADY OF CHARITY

EXHIBIT 3C

Before and after plans showing furring removed



517 SF

INTERIOR FLOOR FINISH
SUMMARY:
CARPET = 25%±
SHEET VINYL = 15%±
VINYL PLANK = 60%±

513 SF MEASURED
OUTSIDE EXISTING WALL
AND NEW WALL

SCALE: 1/8" = 1'-0"

FEBRUARY 2016

THIRD THRU EIGHTH FLOOR TYP. EFFICIENCY 1-BR UNIT



MRE Capital, LLC

CONRAD LOFTS RENOVATION

Plainview, Texas



EXHIBIT 4

Previously successful award where square footage was calculated to exterior of existing masonry wall



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May 7, 2019

Sharon D. Gamble MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St.
Austin, TX 78701

RE: Response to RRAD dated May 6, 2019 for #19013 Our Lady of Charity

Ms. Gamble,

This letter and certification are in response to the deficiency issued for TDHCA application #19013, Our Lady of Charity, related to the unit sizes and square footage threshold requirements under 10 TAC § 11.9(b)(1)(A) of the Qualified Action Plan. Please refer to the following narrative for each unit type and the attached drawings for supportive information to clarify the unit sizes and square footages in question. Please note that our calculations and application design drawings are based on extensive measured architectural and engineering drawings from the 1999 remodel, field verified by Alamo Architects.

Units E-1, E-3, E-4, and E-6

The unit plans submitted with the application showed dimensions to the inside of the load-bearing wall (stud). 10 TAC § 11.1(d)(82) requires that the net square footage be calculated to the outside of the stud (structural system). In the case of this existing historic building, the structural system is multi-wythe load-bearing brick masonry rather than a wood stud. This information is depicted in the building plans and has been added to the unit plan drawings for clarification to show that each of the units in question is in alignment with the square footages listed on the unit plan sheets and elsewhere in the application.

Unit E-7, E-8, E-10, E-11

As above except that the existing load bearing masonry walls are depicted on the unit plan drawings. Supplemental dimensions are provided to clarify that these units are in alignment with square footages listed on the unit plan sheets and elsewhere in the application.

Unit C-1 and Unit C-2

There was an error transmitted from our CAD file drawing to the PDF print provided in the original package. The correct wall dimension is shown on the revised sheets. No changes were made to the square footage, layout, nor the overall building footprint on unit types C-1 and C-2. Both unit types meet the minimum square footage requirements under section 10 TAC § 11.9(b)(1)(A) of the Qualified Action Plan. These units are new construction so the net square footage is calculated to the outside face of stud.

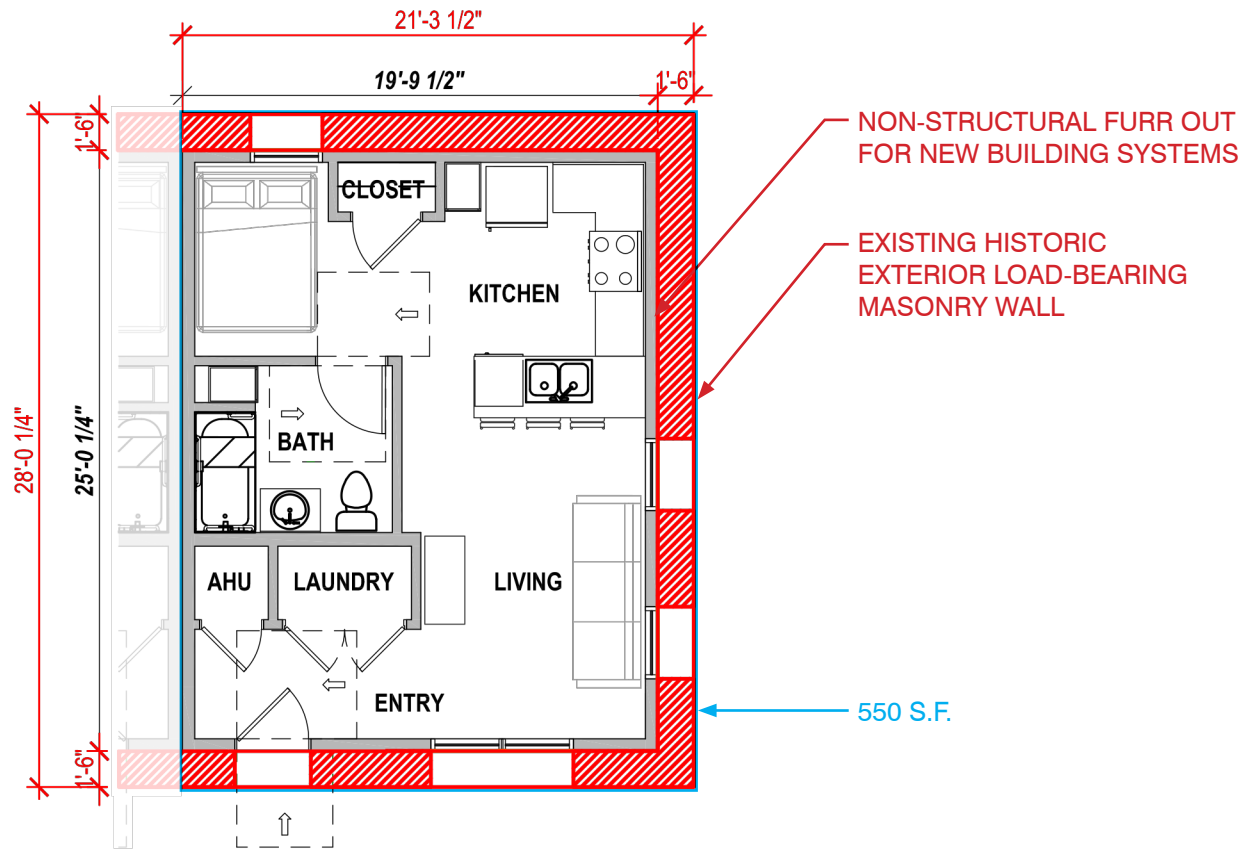
As a licensed Architect in the State of Texas, I certify that all units will meet the minimum requirements of the 2019 Qualified Allocation Plan, and that all supportive information provided in this response will not alter or change the Unit Mix, Project Summary, Development Cost Schedule, Building Configuration Form and pro forma for application #19013.

Thank you,

A handwritten signature in black ink, appearing to read 'Jim Bailey', with a long horizontal line extending to the right.

Jim Bailey
Alamo Architects





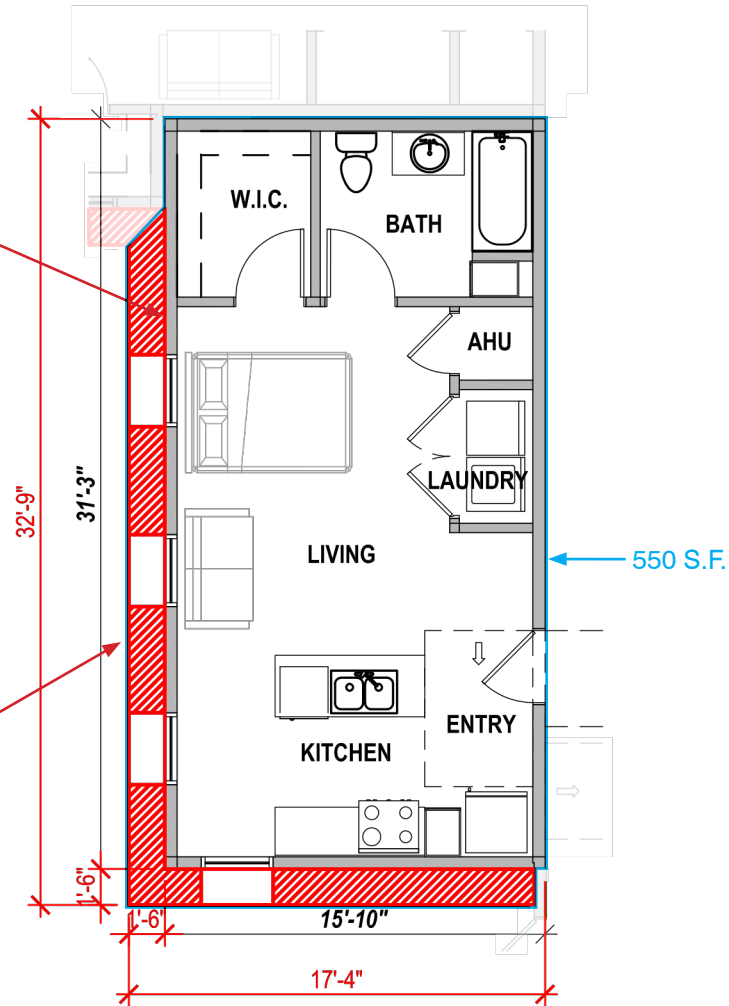
STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

NON-STRUCTURAL FURR OUT
FOR NEW BUILDING SYSTEMS

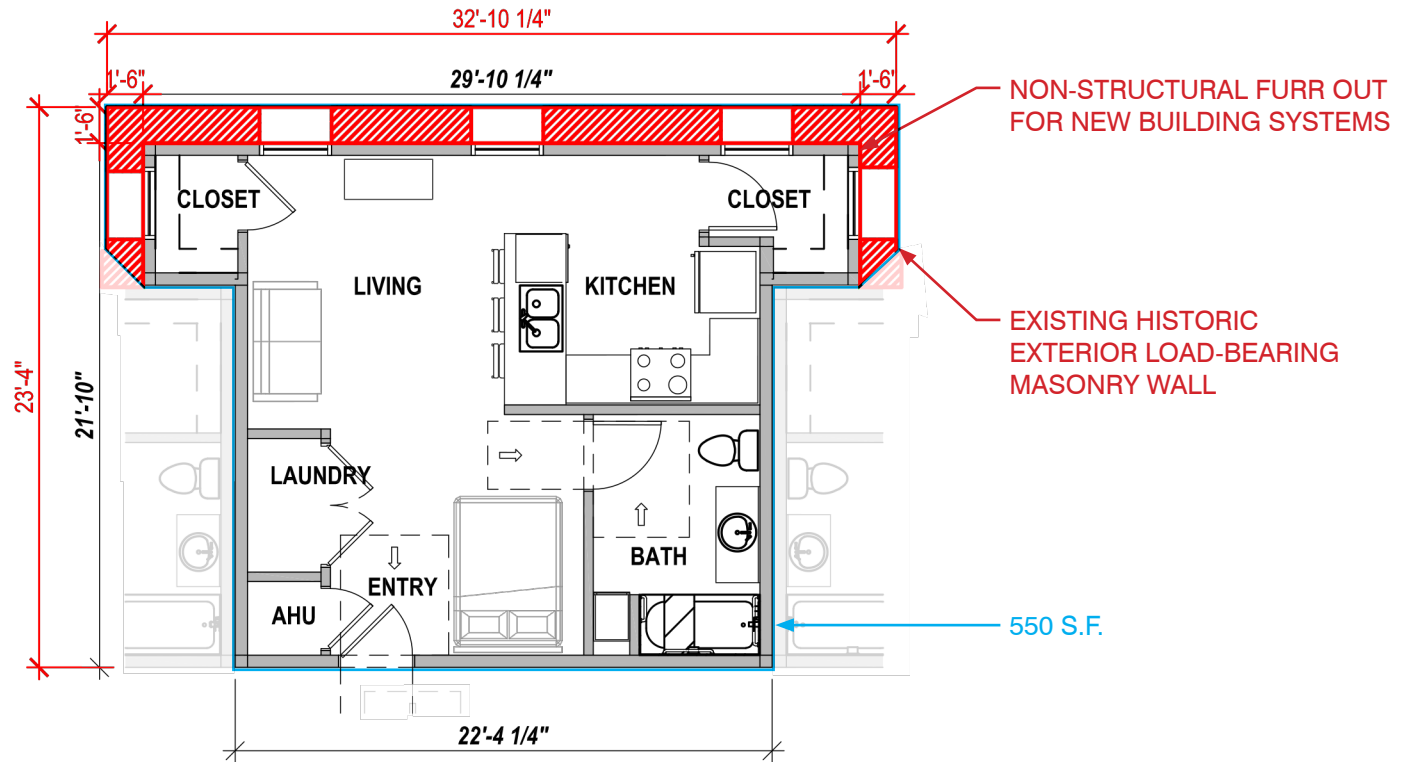
EXISTING HISTORIC
EXTERIOR LOAD-BEARING
MASONRY WALL



STUDIO, ONE BATH

550 S.F.

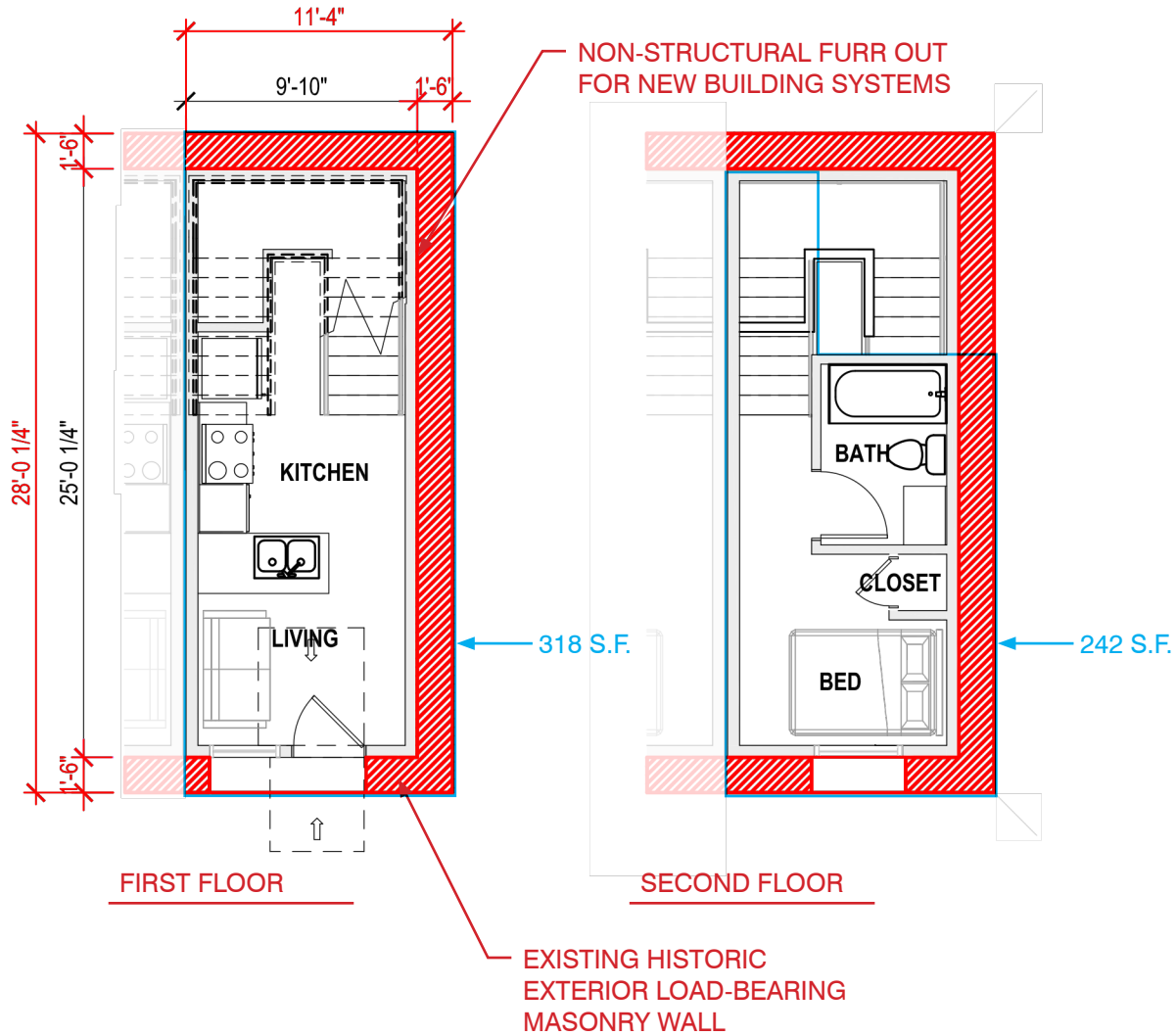
SCALE: 1/8" = 1'-0"



STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"



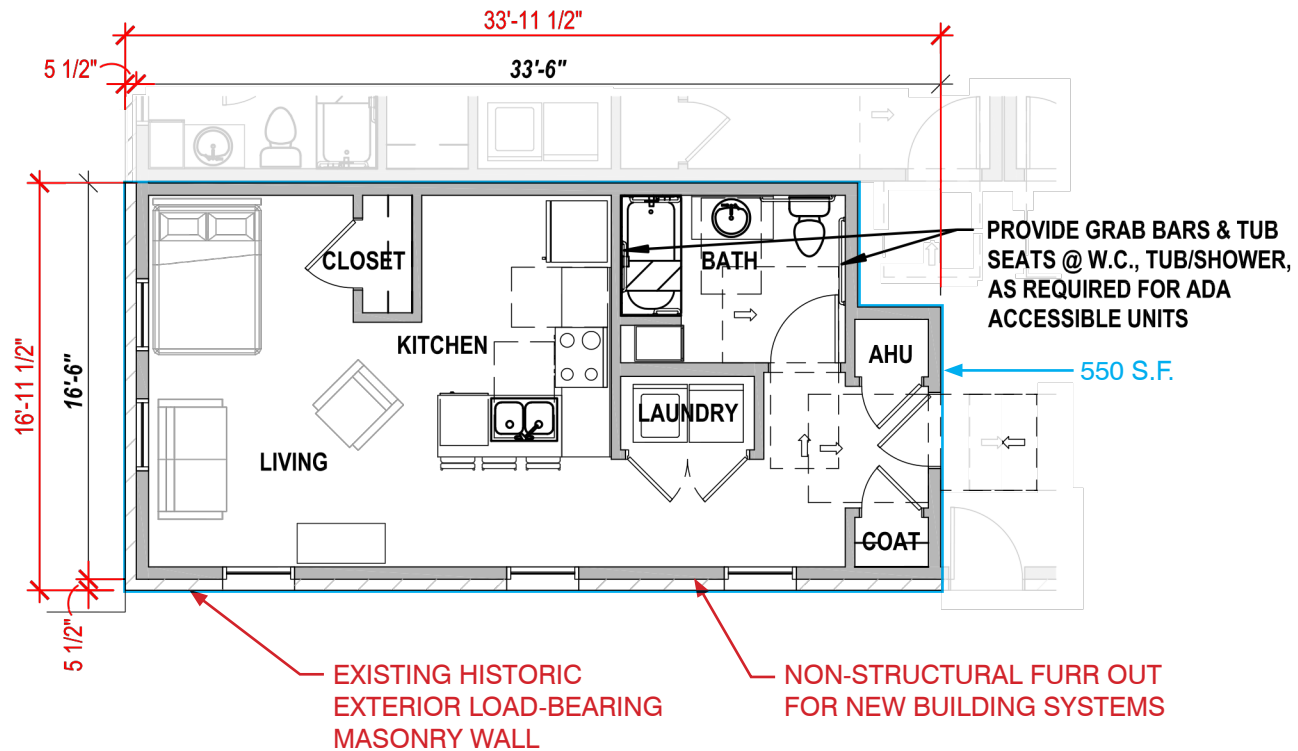
STUDIO, ONE BATH

560 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-6 FLOOR PLAN

OUR LADY OF CHARITY - MAY 7, 2019 (REVISED)

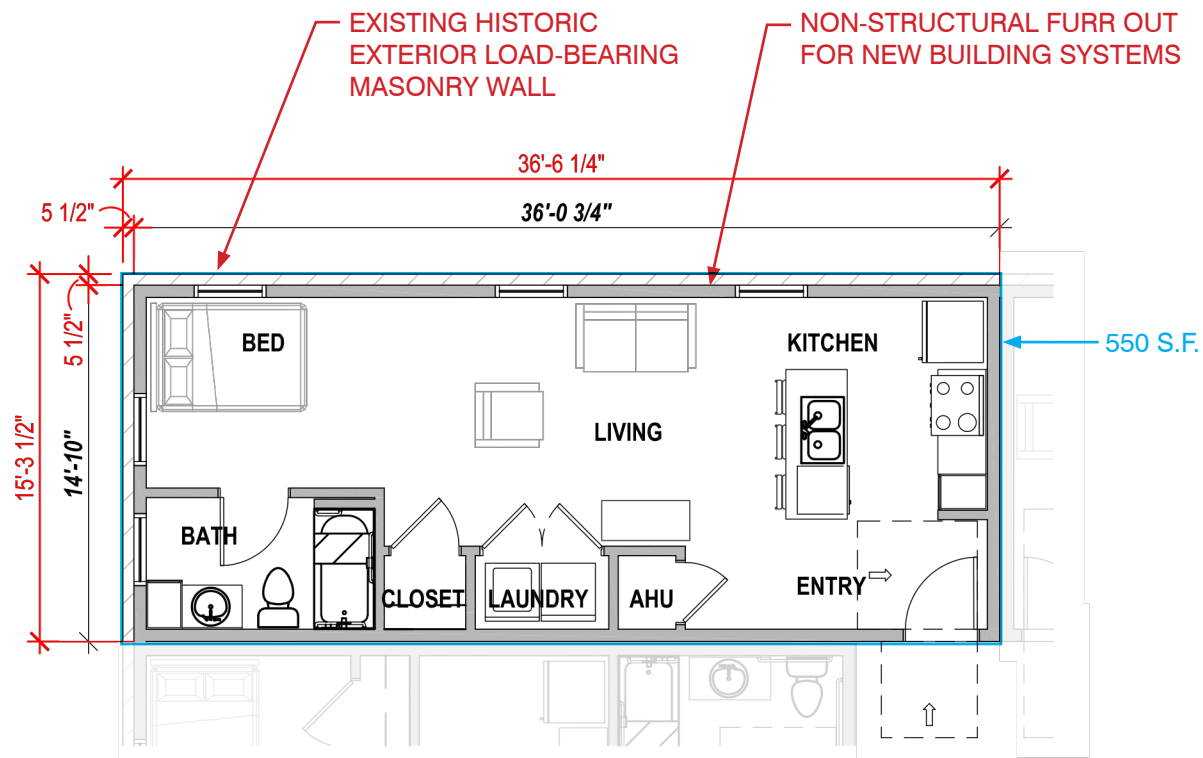


STUDIO, ONE BATH

550 S.F.

NOTE: ACCESSIBILITY NOTES REFER TO FULLY ACCESSIBLE UNITS.

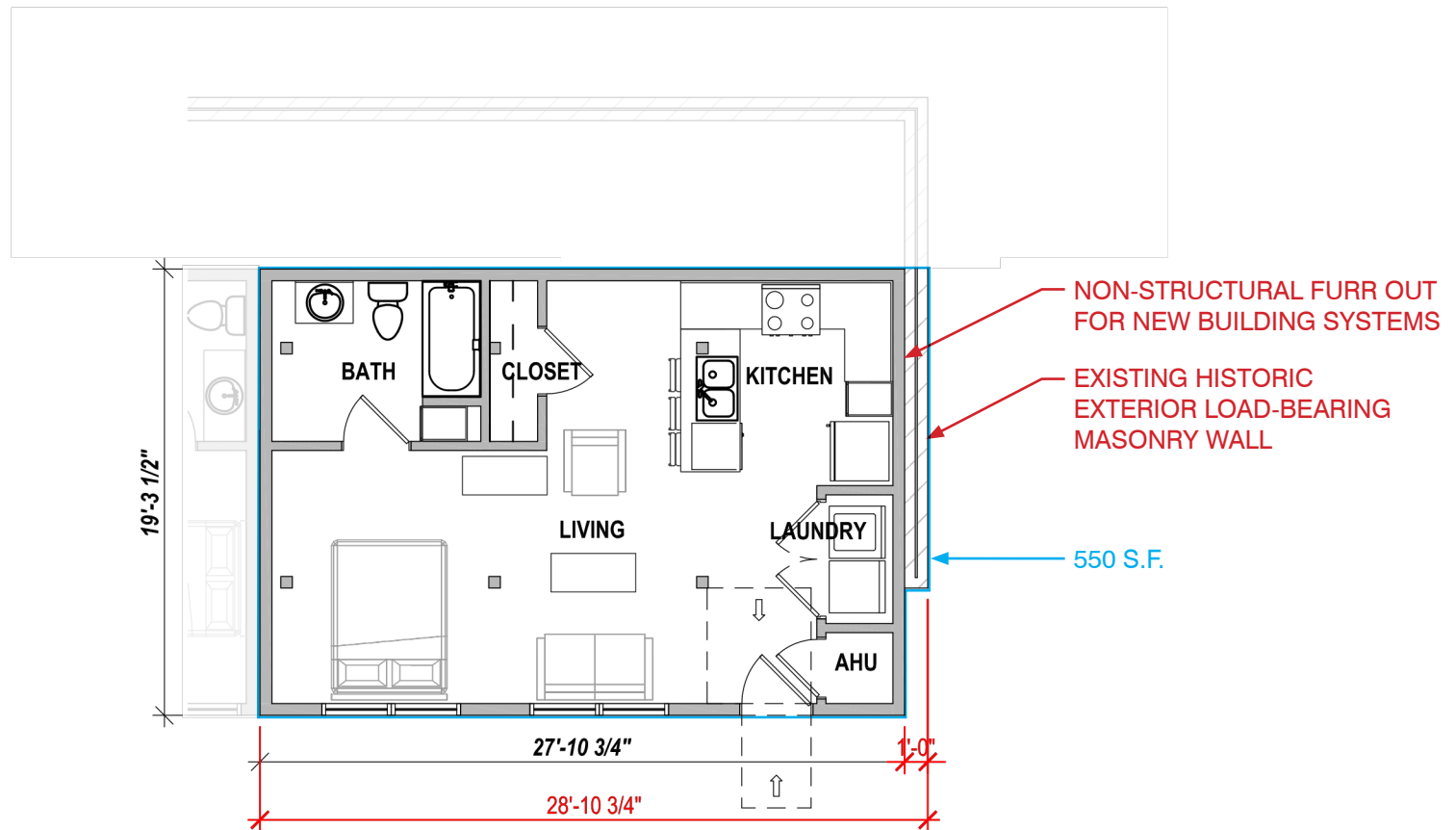
SCALE: 1/8" = 1'-0"



STUDIO, ONE BATH

550 S.F.

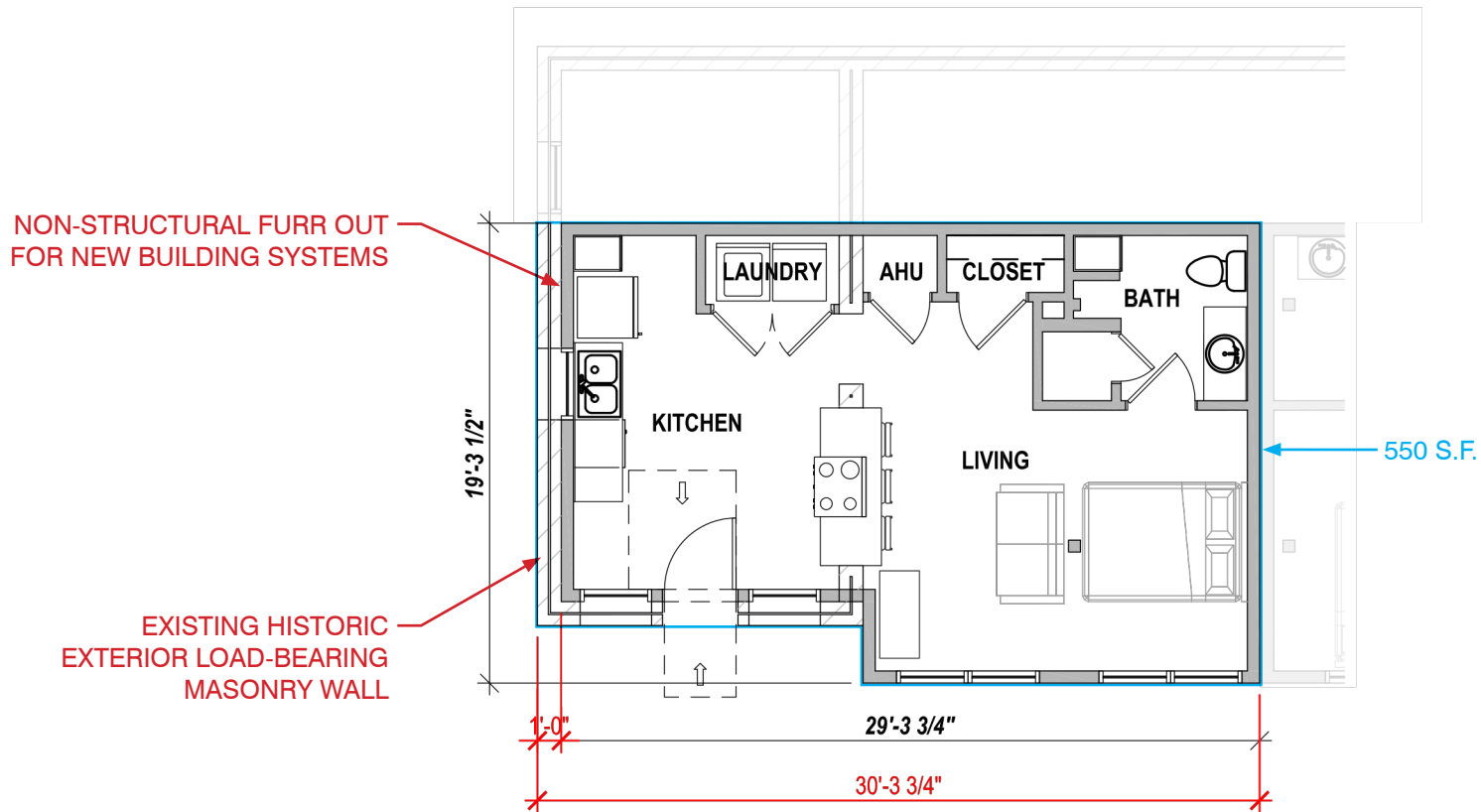
SCALE: 1/8" = 1'-0"



STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"



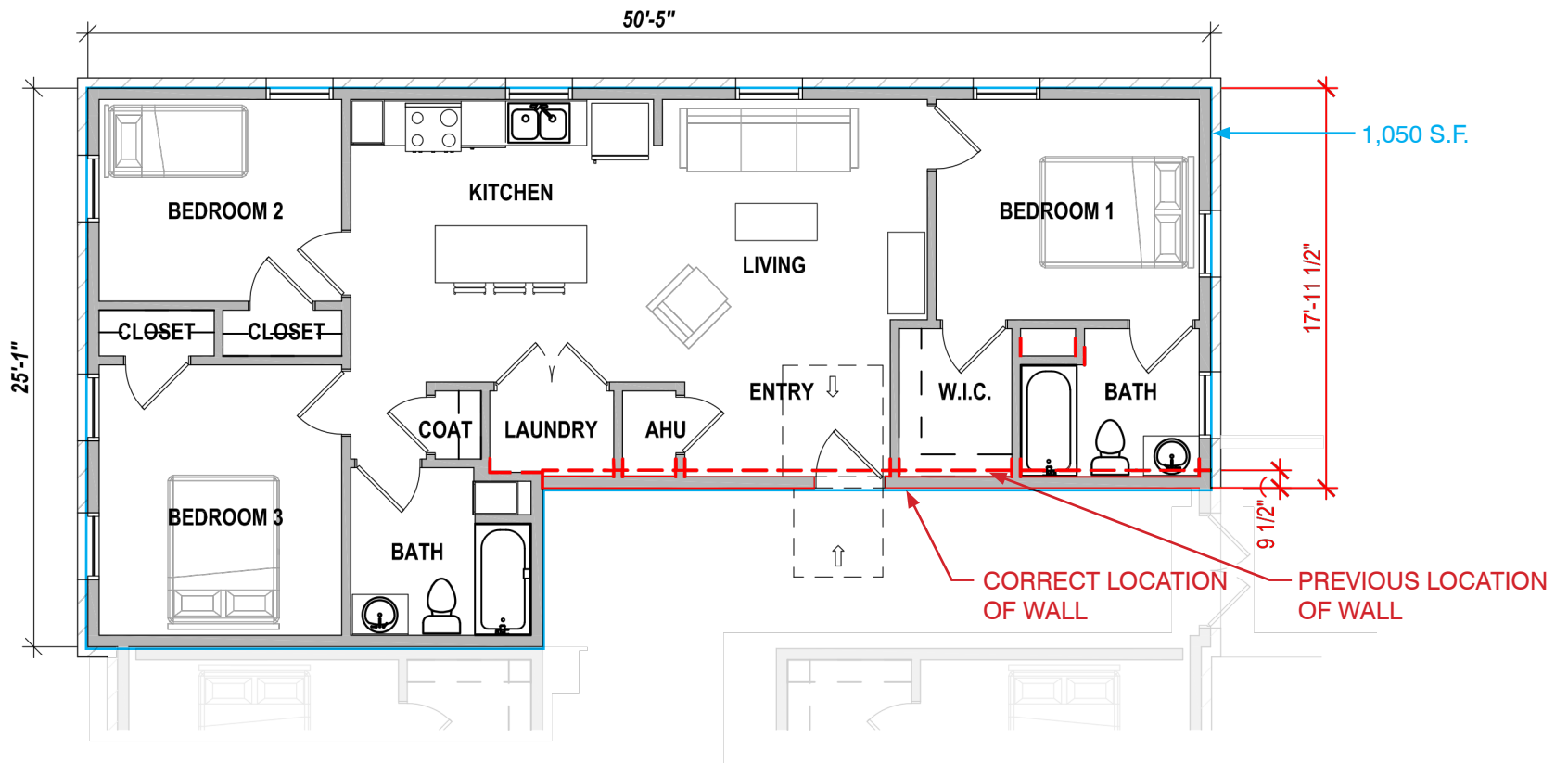
STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-11 FLOOR PLAN

OUR LADY OF CHARITY - MAY 7, 2019 (REVISED)



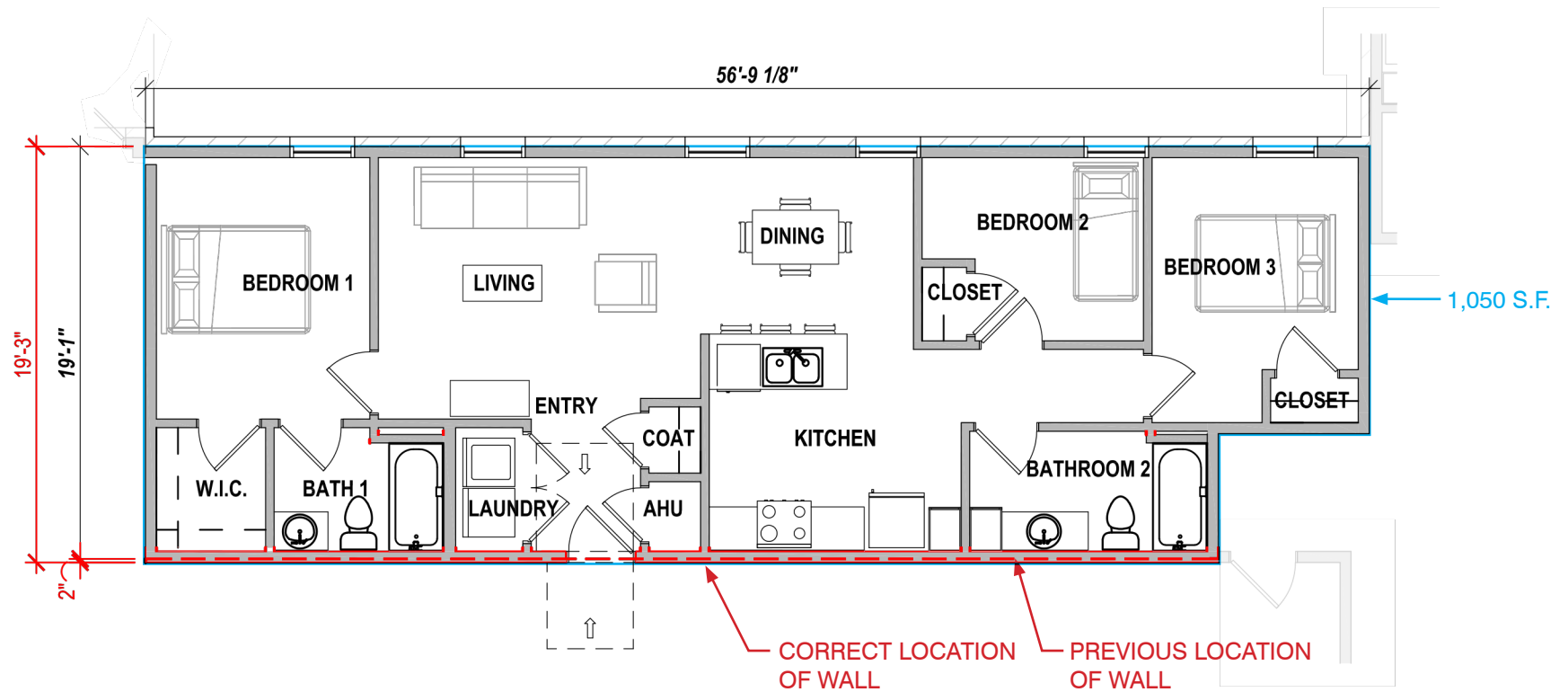
THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

UNIT C-1 FLOOR PLAN

OUR LADY OF CHARITY - MAY 7, 2019 (REVISED)



THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

UNIT C-2 FLOOR PLAN

Scoring Appeal Documents

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BARRY J. PALMER

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(713) 890-3944

June 5, 2019

By Email to david.cervantes@tdhca.state.tx.us
David Cervantes, Acting Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711-3941

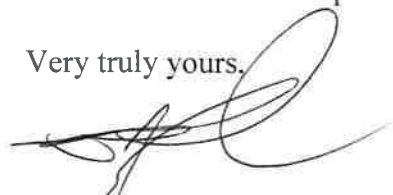
RE: #19013 - Our Lady of Charity, San Antonio, Bexar County, Texas;
Appeal of Final Scoring Notice - Requesting Reinstatement of 12 Points.

Dear Mr. Cervantes:

As you may recall, Our Lady of Charity (the "Project") proposes Adaptive Reuse of a historic convent, combined with New Construction. The Project has a pending appeal of termination regarding whether the Net Rentable Areas of certain of its Units meet the threshold requirements for a Housing Tax Credit project. The QAP's definition of Net Rentable Area relies upon the existence of stud walls for determining the dimensions of a Unit. The existing walls in the historic building are masonry, with no studs. The Architect for the Project has also shown that the methodology he used was accepted by the TDHCA in connection with its 2016 award of 9% tax credits to The Conrad Lofts (#16034), the Adaptive Reuse of a historic hotel that also had masonry walls without studs.

The success or failure of this appeal is essentially tied to the status of the pending appeal of termination. If the Architect's methodology is approved for the purpose of determining whether threshold NRA requirements have been met, then the same methodology shows that the minimum NRA requirements for six points have been met. If those six points are reinstated, then the six points denied for Pre-Application Participation should also be reinstated as a matter of right. In that regard, we respectfully ask that this appeal of the Final Scoring Notice be granted and that the 12 claimed points in question be reinstated.

Very truly yours,



Barry J. Palmer

9 Greenway Plaza, Suite 1000 Houston, Texas 77046
Phone: 713-651-0111 Fax: 713-651-0220
Web: www.coatsrose.com

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June 5, 2019

Sharon D. Gamble, MSW, PMP
Competitive Housing Tax Credit Administrator
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78711-3941

RE: Appeal Response to the Final Scoring Notice to Application;
#19013 Our Lady of Charity, San Antonio, TX

Ms. Gamble:

Please accept this letter as an appeal of the Final Scoring Notice issued for #19013 Our Lady of Charity (the "Development") on May 29, 2019, which denied six points requested for meeting Unit Size requirements under §11.9(b)(1)(A), and by virtue of losing those points, resulted in the denial of another six points under §11.9(e)(3) for Pre-Application Participation. Our appeal intends to provide clarification of how the calculation of Net Rentable Area was accomplished by Alamo Architects (the "Architect"). We hope to dispel any misinterpretation of the technical and design elements presented in the Unit floor plans and other drawings included behind Tab 22 of the Application.

The scoring notice denotes the following explanation for difference in points requested and points awarded by the Department, as well as penalties assessed:

- §11.9(b)(1)(A) Unit Sizes. The Application requested three (6) points but is eligible for zero (0) points under this item because ten (10) Unit types do not meet the minimum scoring threshold. (Requested 6, Awarded 0)
- §11.9(e)(3) Pre-application Participation. The Application requested six (6) points but is not eligible for points under this item because the Application final score (inclusive of only scoring items reflected on the self-score form) varies by more than four (4) points from what was reflected in the preapplication self-score. (Requested 6, Awarded 0)

Given that the Development is an Adaptive Re-use/ New Construction project, the QAP requires that the Development be classified as New Construction. Therefore, Net Rentable Area should be calculated as follows:

*(87) Net Rentable Area ("NRA") – The Unit space that is available exclusively to the tenant and is typically heated and cooled by a mechanical HVAC system. NRA is measured to the **outside of the studs of a Unit** or to the middle of walls in common with*

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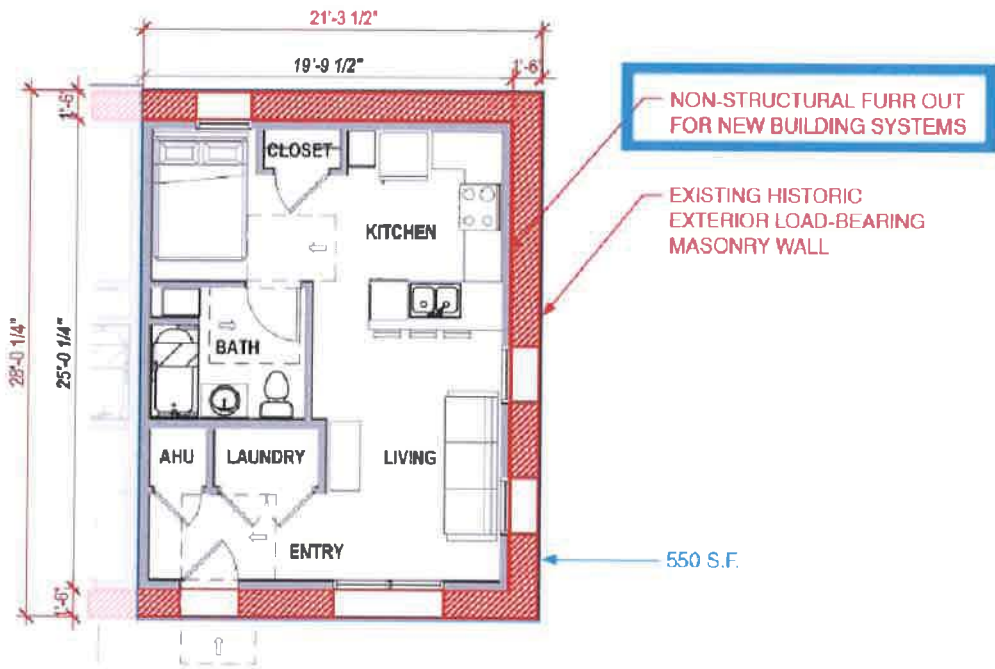


other Units. NRA does not include common hallways, stairwells, elevator shafts, janitor closets, electrical closets, balconies, porches, patios, or other areas not actually available to the tenants for their furnishings, nor does NRA include the enclosing walls of such areas.

Our Clarified Response

Original and revised Unit floor plans in the Application showed a non-structural “furr-out” wall. See image 1 below to identify location of the non-structural “furr-out” system on one of the Unit floor plans.

Image 1



STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

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The Architect intended the non-structural furr-out wall to serve only as a channel for any plumbing or electrical systems, if in fact such channels would be required. On the Deficiency Response the furr-out walls are clearly labeled. The furr-out walls were never intended to be a structural wall with “studs”, but rather a furring system that would allow for mechanical and plumbing systems to be concealed, if desired. We have confirmed with the Architect that this device is NOT needed per IBC Code and has now been removed from the Unit plans to avoid the confusion it presented in calculating NRA.

TDHCA staff indicated in their supplemental report to the Board on May 21, 2019, that NRA is measured to the outside of the “stud.” Due to the existing design elements of this particular historic building, the exterior masonry wall (what the Architect referred to as the “structural wall” or the “load bearing wall” in the previous response) is serving the same purpose as a “stud” wall would serve in a New Construction development. In fact, there can be no other dimension that can be used, as the only wall element that exists is the exterior masonry wall. The calculation of the NRA has been consistent throughout this process – in the initial application and in the subsequent Deficiency Response. The QAP and Multifamily rules do not provide clear language and/or guidance in determining NRA for historic buildings nor considering preservation of existing load-bearing walls.

Please accept the attached supplemental information from the Architect clarifying the purpose of the furr-out and showing the Unit plans as being consistent with the square footage requirements under §11.9(b)(1)(A) of the QAP.

Because the QAP does not deal with the treatment of masonry walls without studs, the Architect has provided as an example a unit floor plan of an Adaptive Reuse Development from 2016 where NRA was calculated. The Conrad Lofts received a 9% Housing Tax Credit award on July 28, 2016. The Unit plan example specifically states that the NRA was measured to the “outside of the masonry wall,” and this technique was presumably deemed acceptable by the TDHCA. The Architect used this approach in designing Units E-1, E-3, E-4, E-6, E-7, E-8, E-10 and E-11 for the Our Lady of Charity Application.

Finally, In our previous response to the RFAD issued on May 6, we also included revised sheets for Unit C-1 and C-2 due to a technical error. It is our understanding that these revisions are acceptable by TDHCA under the Administrative Deficiency previously provided. Units C-1 and C-2 are also shown on the attached exhibit provided by the Architect showing a minimum of 1050 SF at every unit with the NRA calculated per the QAP New Construction requirements.



<u>EFFICIENCY UNIT</u>	<u>NRA</u>
Required for Points	550 sf
Unit E-1 Actual	550 sf
Unit E-3 Actual	550 sf
Unit E-4 Actual	550 sf
Unit E-6 Actual	560 sf
Unit E-7 Actual	550 sf
Unit E-8 Actual	550 sf
Unit E-10 Actual	550 sf
Unit E-11 Actual	550 sf
<u>3/2 UNIT</u>	<u>NRA</u>
Required for Points	1,050 sf
Unit C-1 Actual	1,050 sf
Unit C-2 Actual	1,050 sf

Conclusion

We can understand that the language submitted in our previous response may have created a technical misunderstanding on the function of the furr-out/channel. Previous documentation submitted in the RFAD response shows drawings were revised to show the existing masonry walls and how the NRA calculations were made to meet threshold and scoring requirements. The Units as submitted in the original Application and supplemented in the Deficiency Response **do meet the minimum square footage points for points under §11.9(b)(1)(A)**. Based on the facts presented, we urge you to reinstate our Application and grant the six points claimed under §11.9(b)(1)(A). As a result of Staff denying the points for Unit Size, the Application additionally lost six points under §11.9(e)(3) for Pre-application Participation. We respectfully request that these points also be reinstated, so that the Final Score for Our Lady of Charity is the originally requested **160 points**.

Thank you,


Timothy Alcott
Real Estate & Legal Services Officer



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June 3, 2019

Sharon D. Gamble MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St.
Austin, TX 78701

RE: Response to staff comments

Ms. Gamble,

Please see responses below.

1. Inside versus outside face of stud

Staff response:

“for the net rentable area of the Unit, the measurement must be made to the outside of the stud, i.e. the surface of the stud where the interior wall would affix.”

The surface of the stud where the interior wall would affix is the inside face. The outside face is that which faces out from the unit.

Refer to exhibit 1: inside versus outside face of stud

2. Furring strips to be removed

Our drawings show furring strips affixed to the existing historic walls for convenience of installation of new plumbing and electrical per Exhibit 2, below. It seems this might have been interpreted as a “stud wall”. We will not use furring strips and will instead utilize alternate methods for new plumbing and electrical service as necessary.

Refer to Exhibit 2: example of furring strips

Refer to Exhibit 3: Before and after plans showing furring removed

3. Calculating Net Rentable to outside face of existing wall

Many historic buildings subject to adaptive reuse do not have stud walls so it is impossible to calculate the net rentable square footage through a strictly literal reading of “outside of the studs” in the QAP definition. In standard wood frame construction, net square footage is calculated to the outside face of the stud and excludes masonry veneers and other material affixed to it. In the past, for adaptive reuse projects, TDHCA has recognized that when there is no stud wall, the existing wall, whatever it’s composition (excluding veneers) meets the definition of “stud wall”. Please see example unit plan below from previous award:

Refer to Exhibit 4: previously successful award where square footage was calculated to exterior of existing masonry wall: Conrad Lofts a 2016 9% award.

Thank you,



Jim Bailey
Alamo Architects



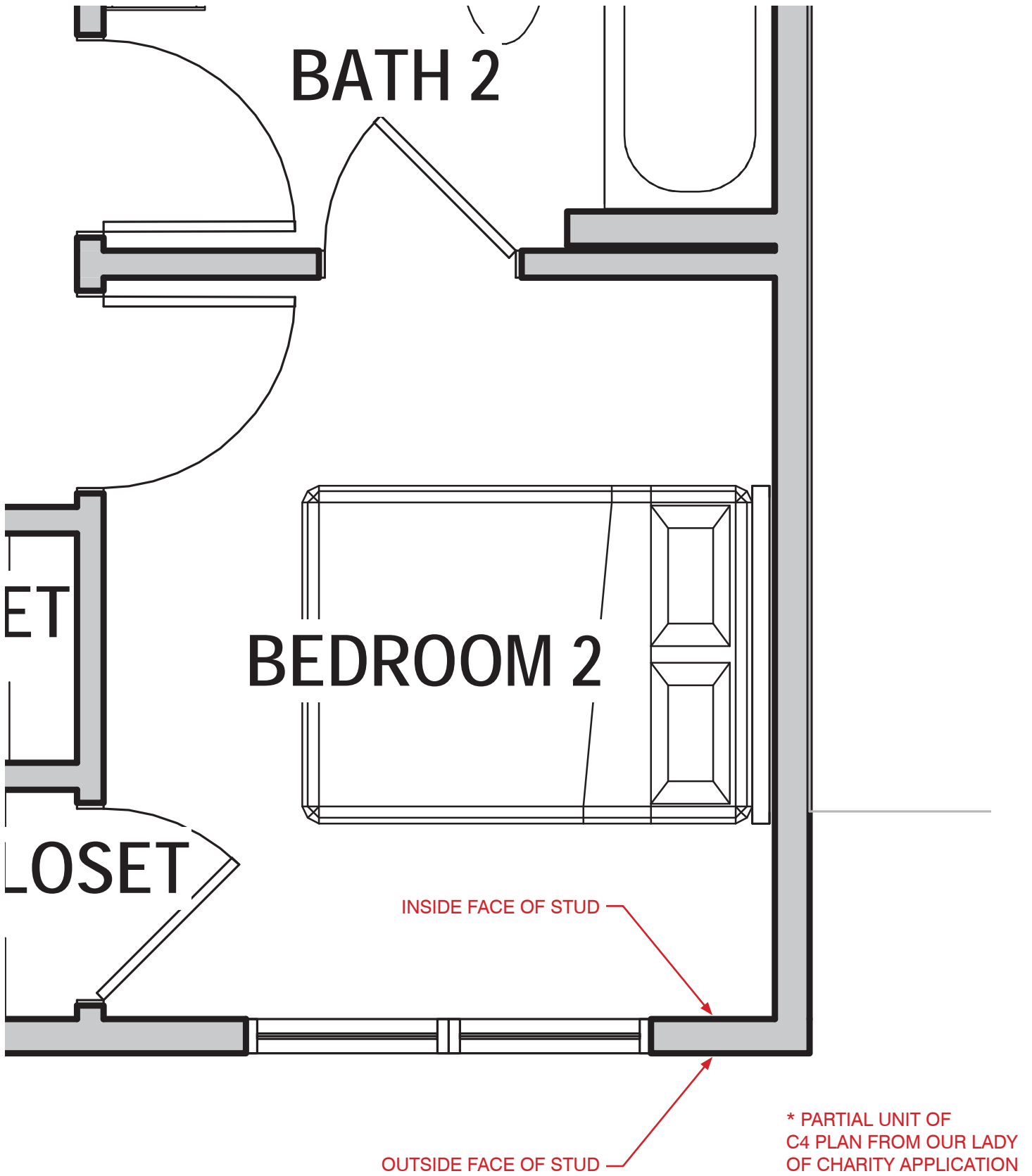


EXHIBIT 1
Inside versus outside face of stud

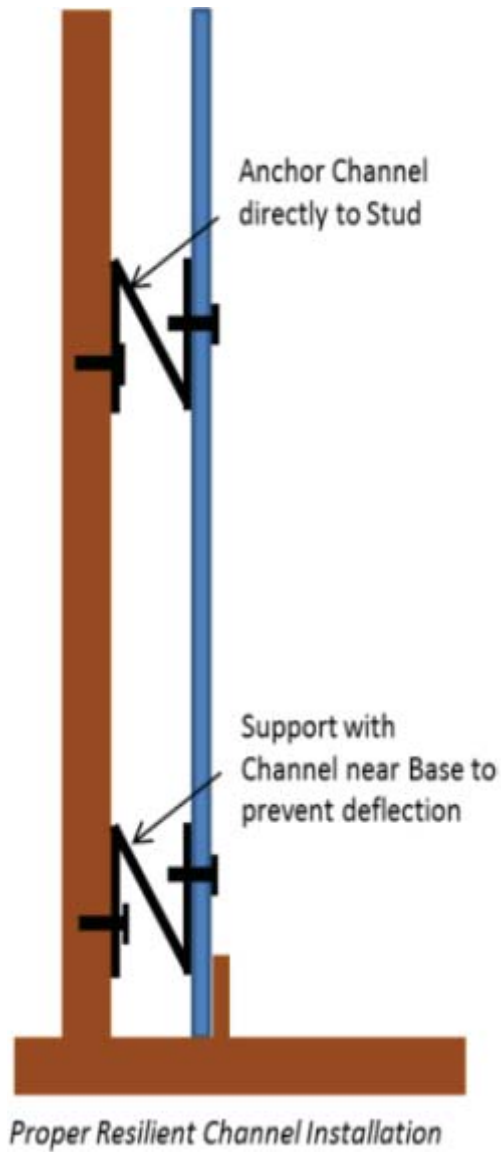
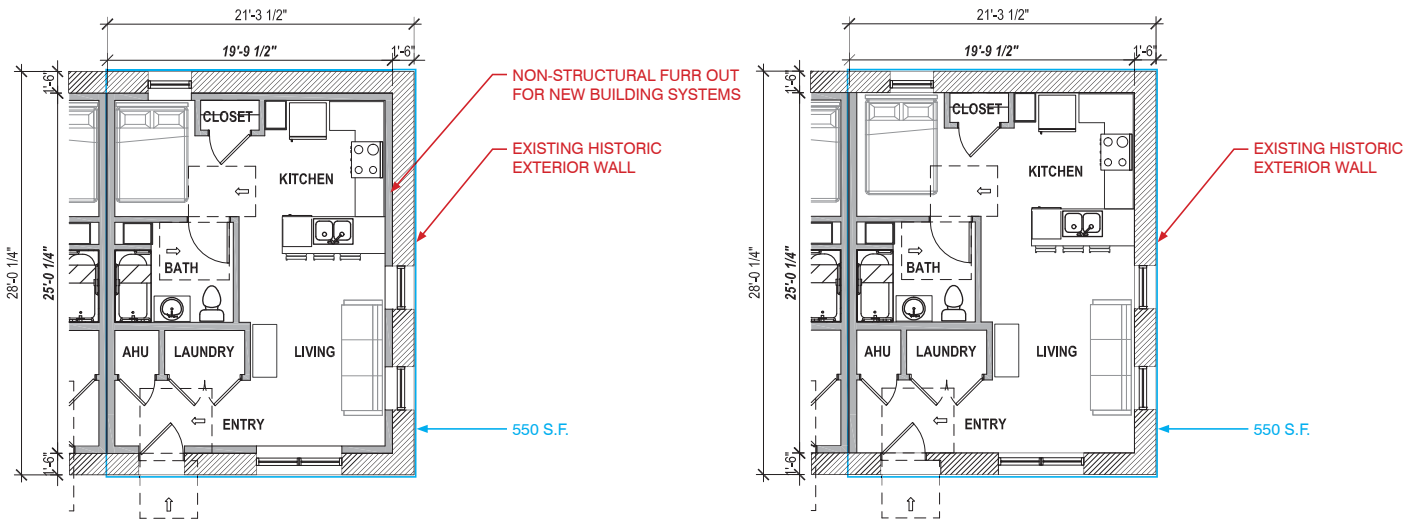


EXHIBIT 2
Example of furring strips

- BEFORE -

- AFTER -



STUDIO, ONE BATH

550 S.F.

SCALE: NTS

UNIT E-1 FLOOR PLAN

OUR LADY OF CHARITY

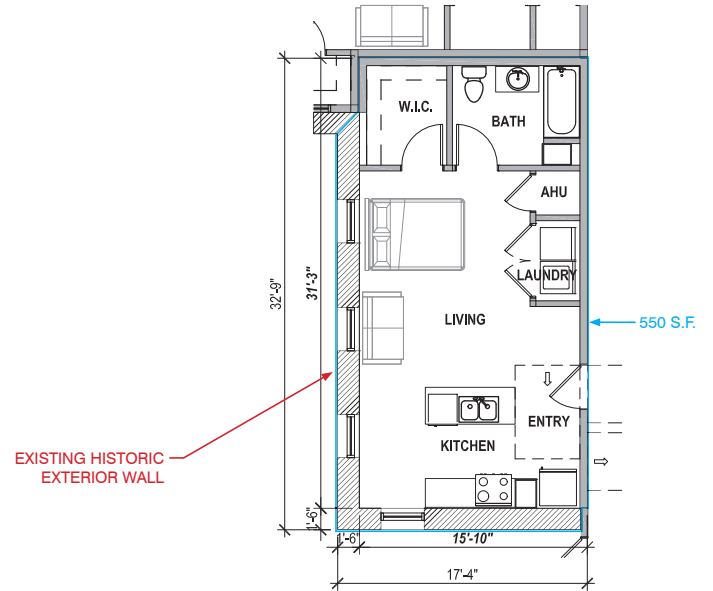
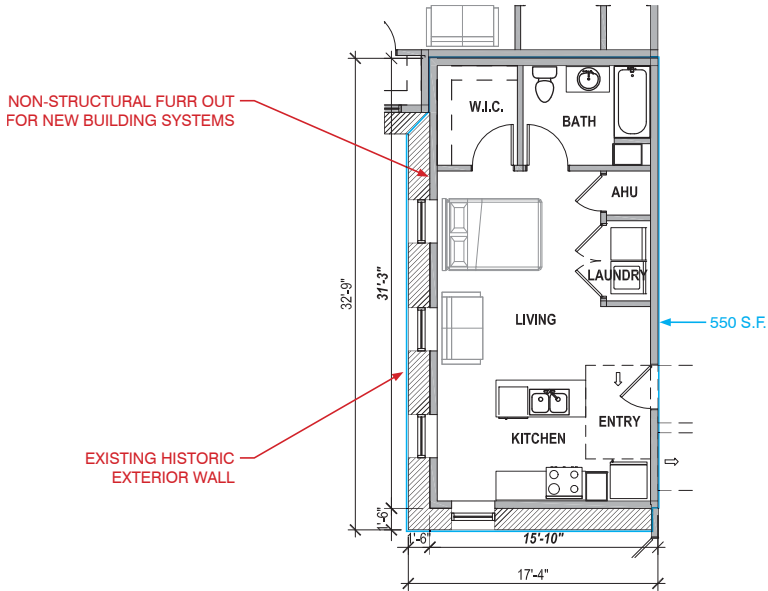
page 5 of 35

EXHIBIT 3A

Before and after plans showing furring removed

- BEFORE -

- AFTER -



STUDIO, ONE BATH

550 S.F.

SCALE: NTS

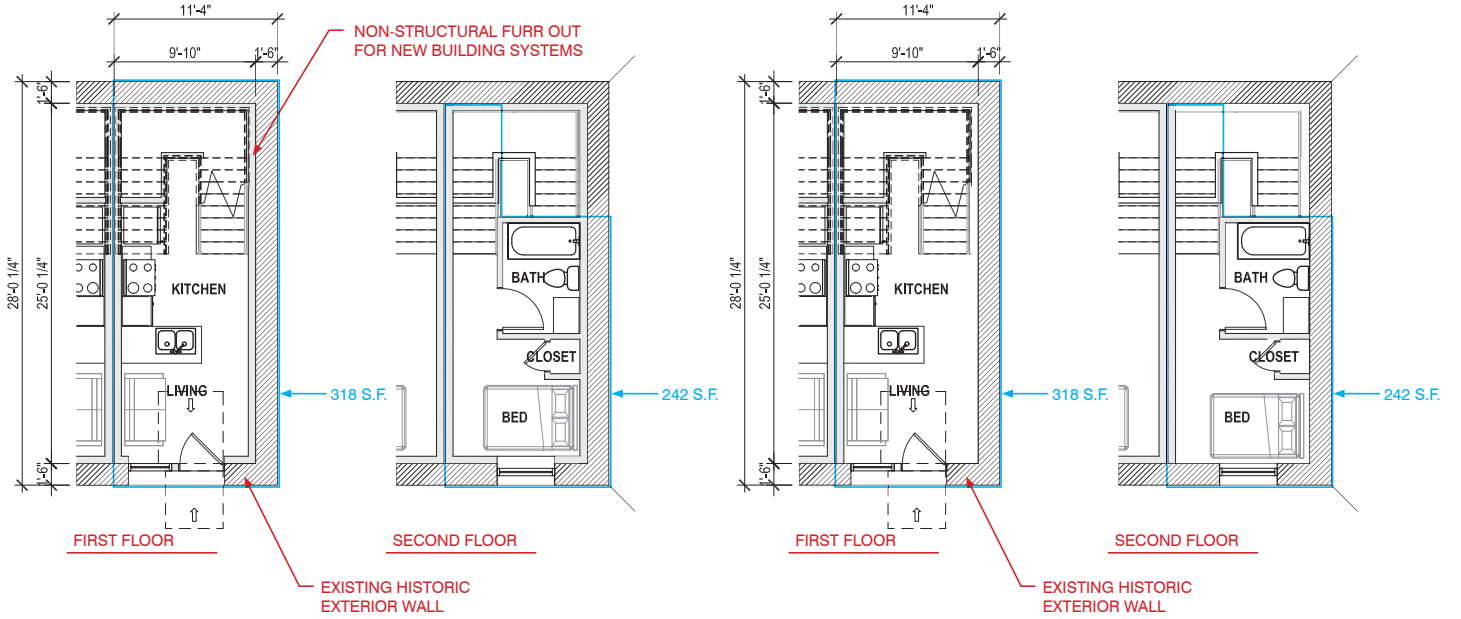
UNIT E-3 FLOOR PLAN
OUR LADY OF CHARITY

page 7 of 35

EXHIBIT 3B
Before and after plans showing furring removed

- BEFORE -

- AFTER -



STUDIO, ONE BATH

560 S.F.

SCALE: NTS

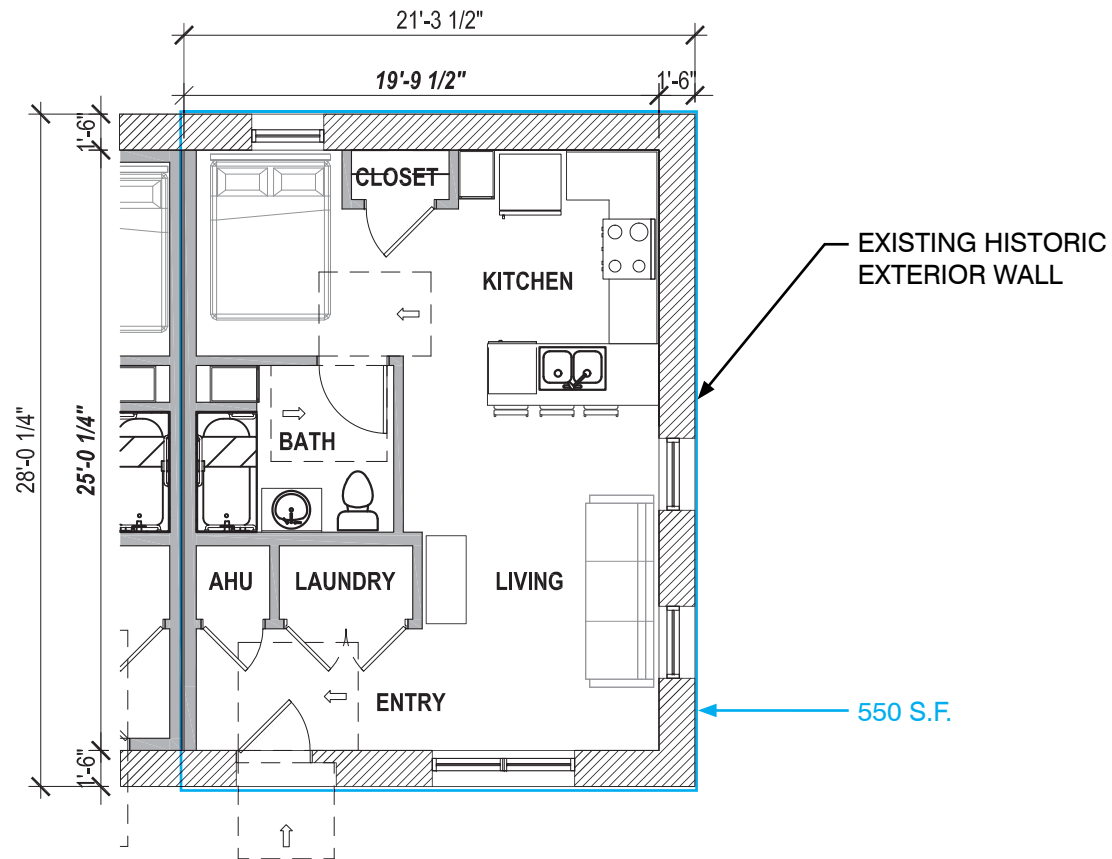
UNIT E-6 FLOOR PLAN

OUR LADY OF CHARITY

page 10 of 35

EXHIBIT 3C

Before and after plans showing furring removed



STUDIO, ONE BATH

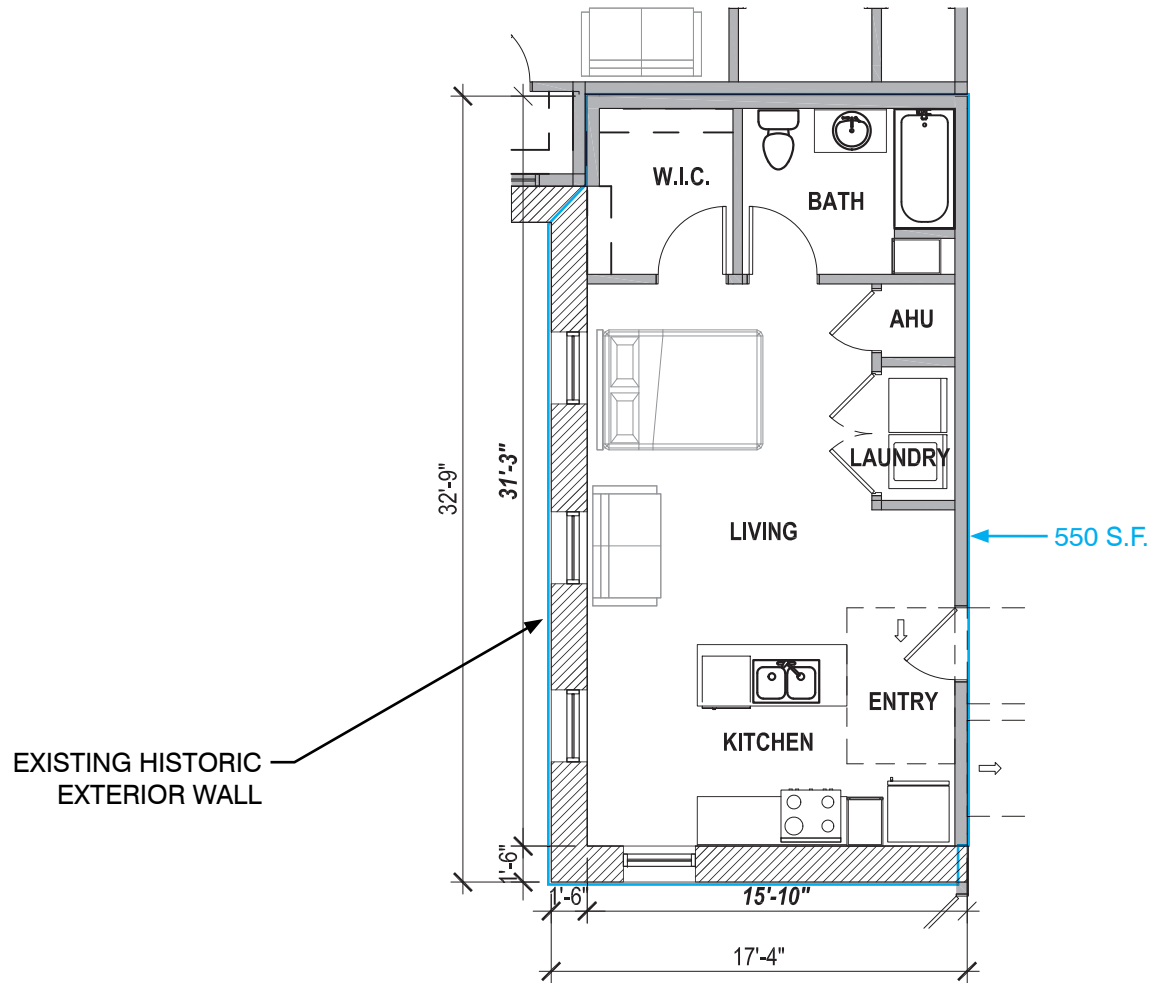
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-1 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

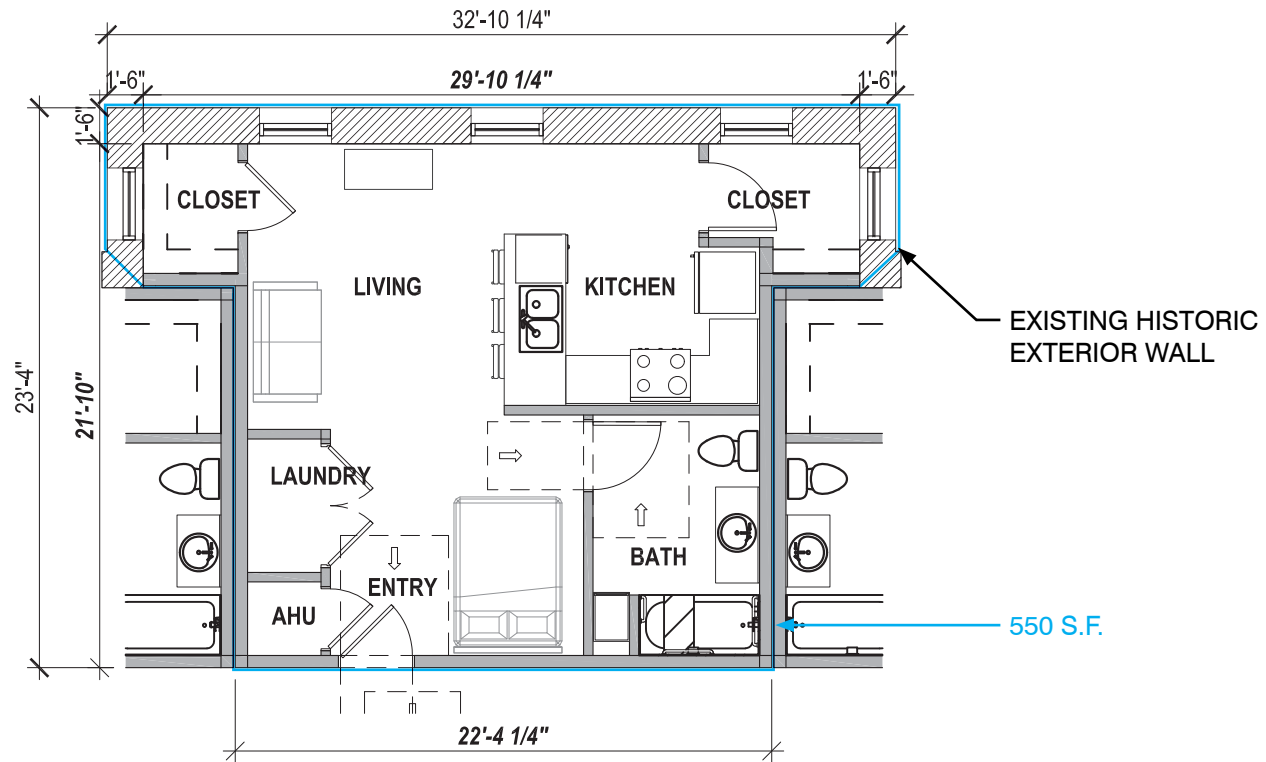
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-3 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

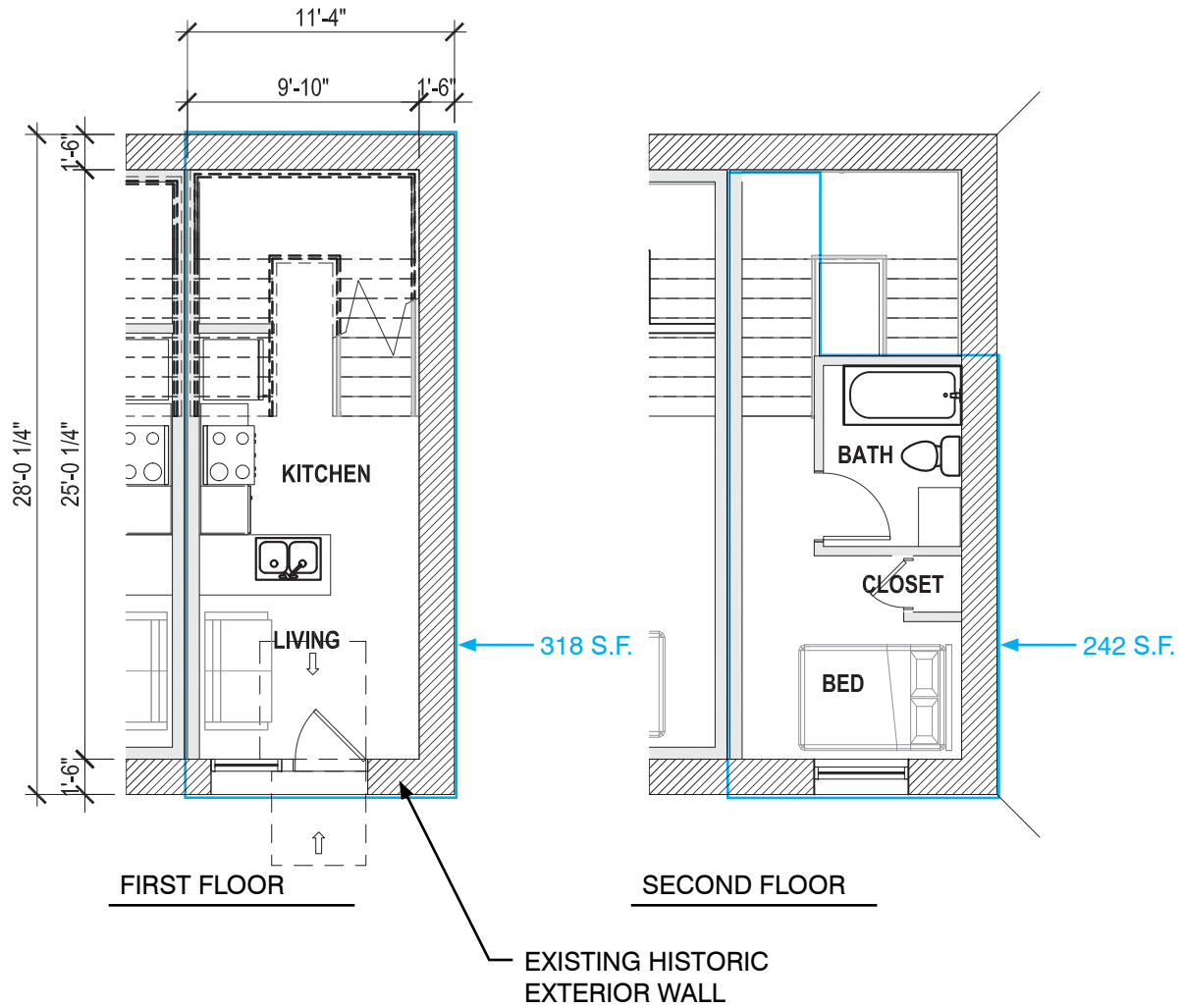
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-4 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

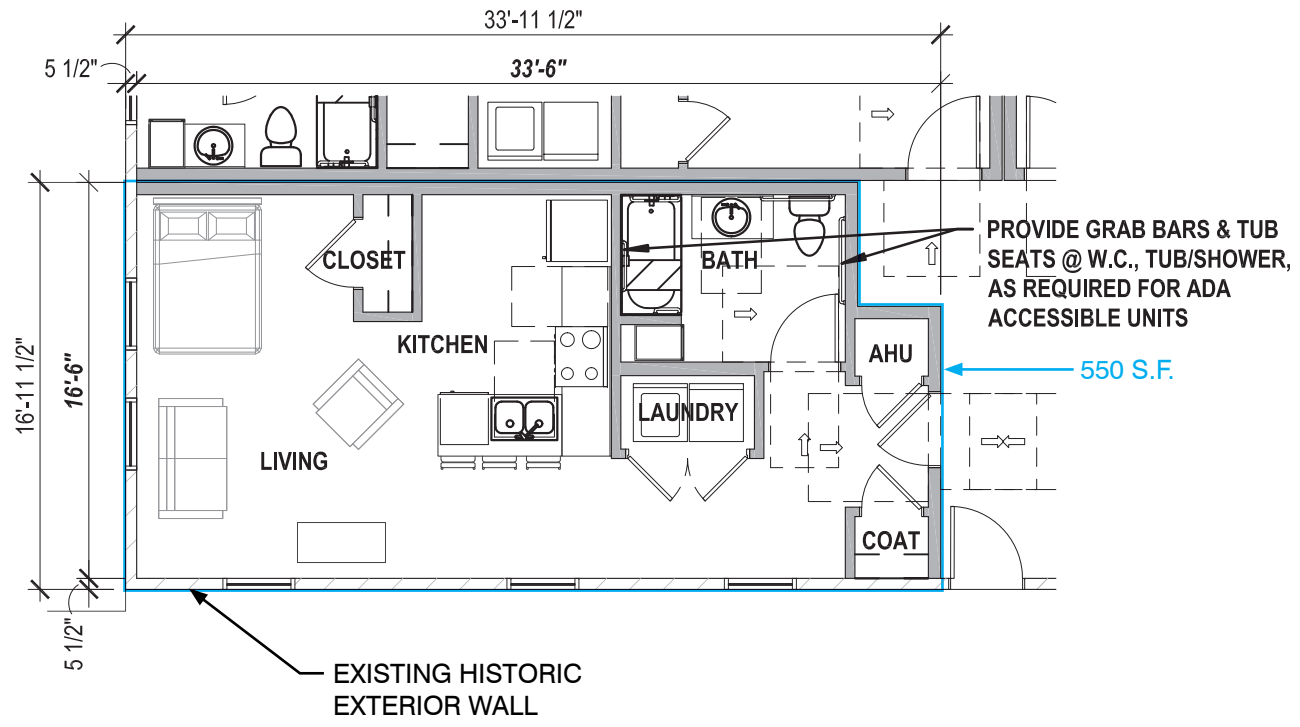
560 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-6 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

550 S.F.

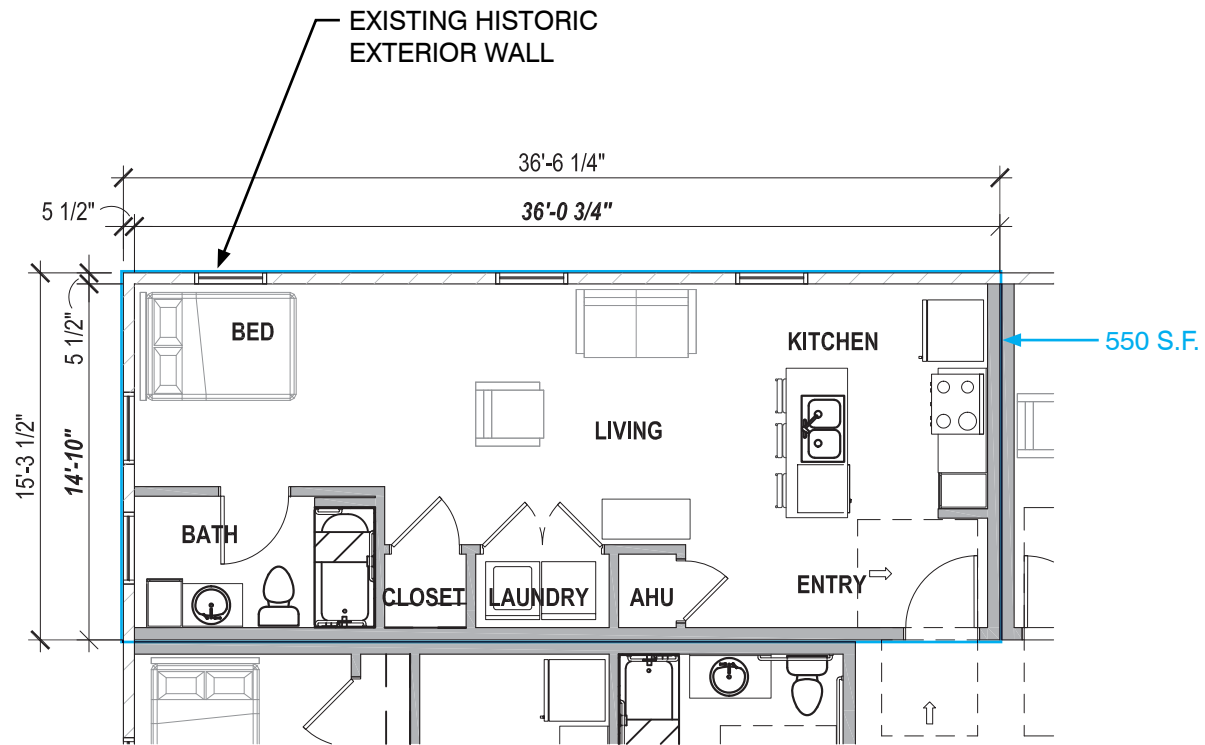
NOTE: ACCESSIBILITY NOTES REFER TO FULLY ACCESSIBLE UNITS.

SCALE: 1/8" = 1'-0"

UNIT E-7 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

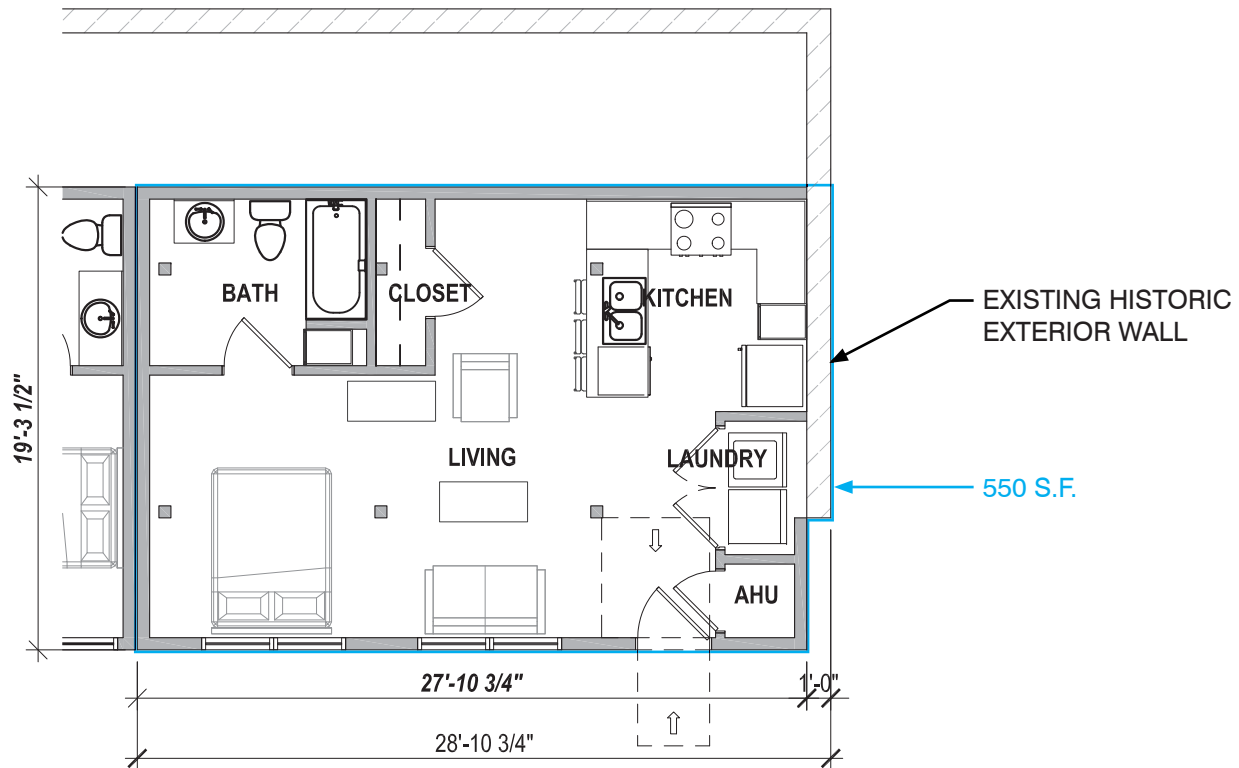
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-8 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

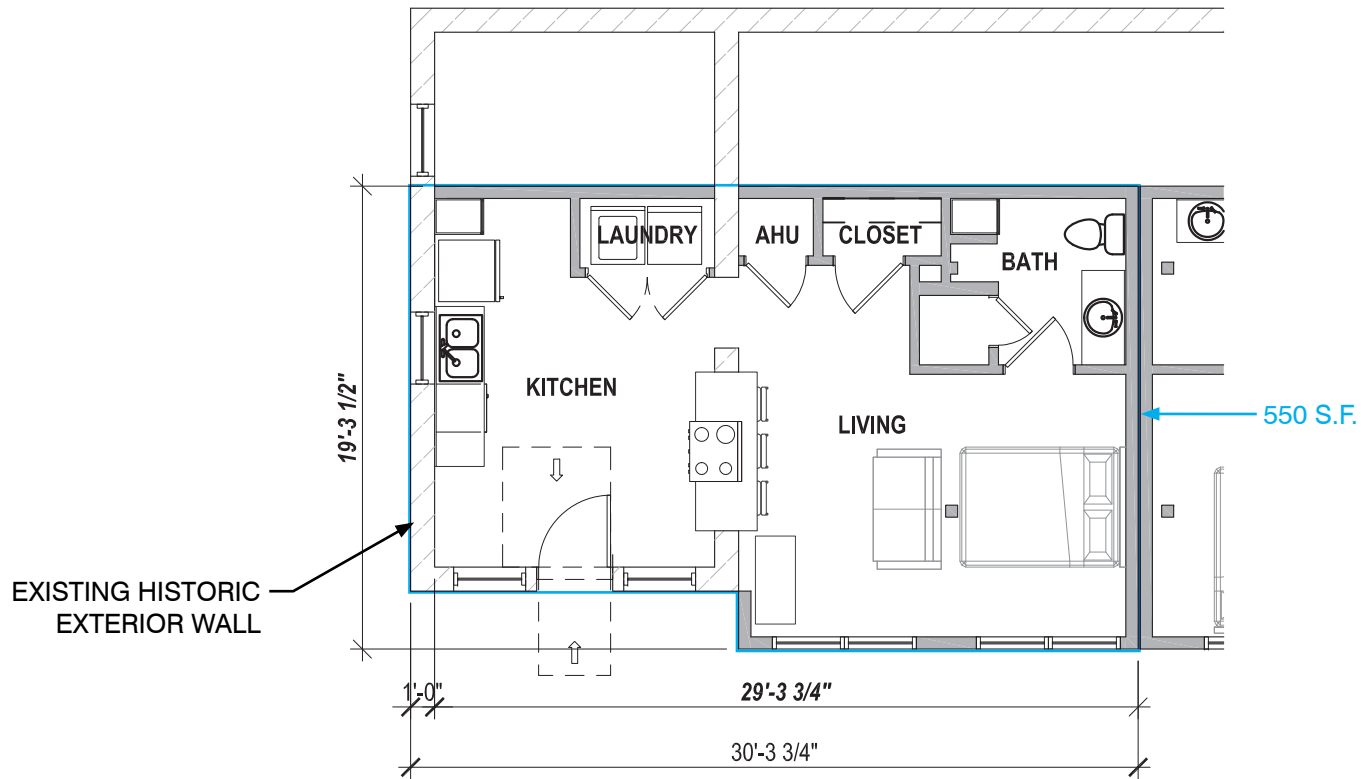
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-10 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

Furr out removed



STUDIO, ONE BATH

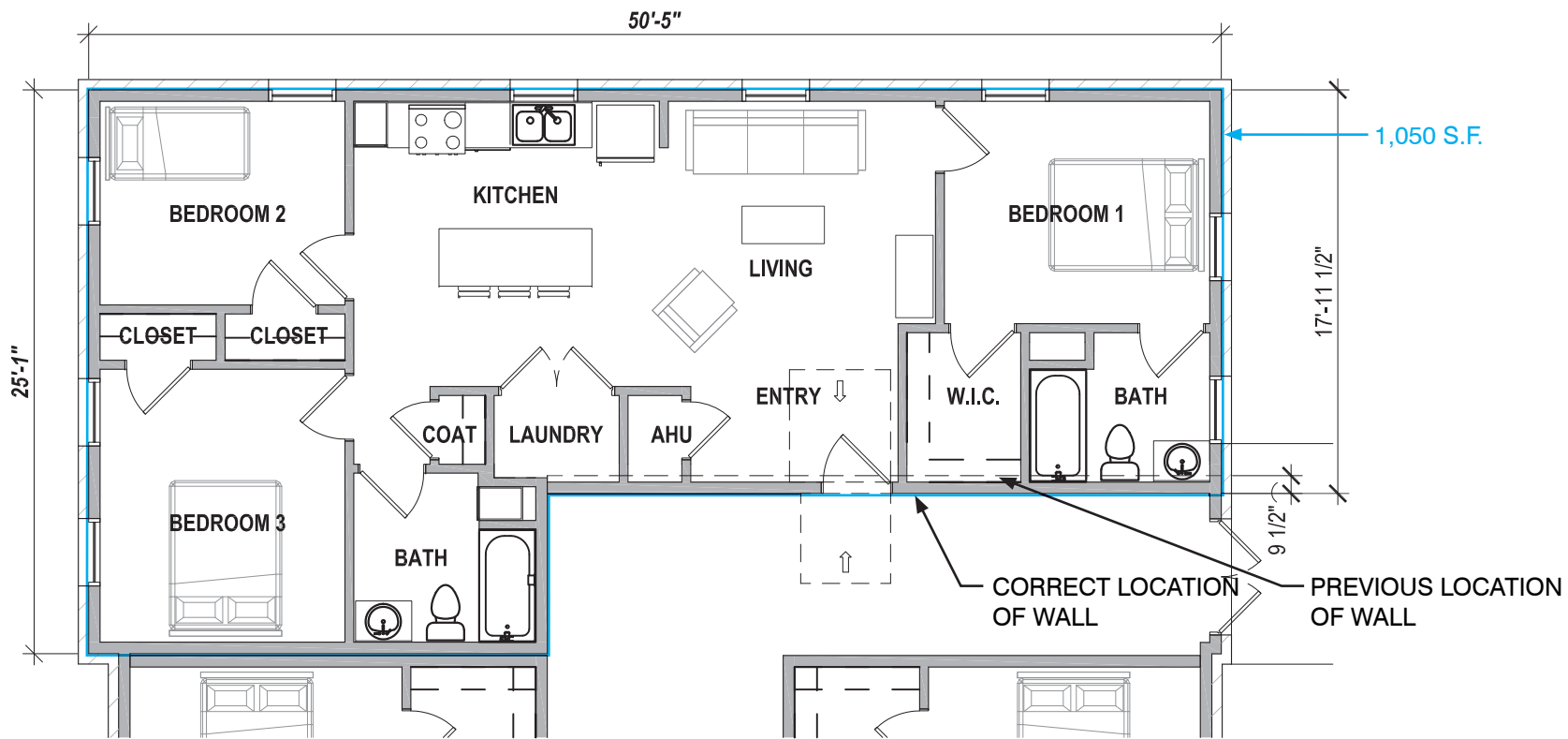
550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-11 FLOOR PLAN

OUR LADY OF CHARITY - MAY 30, 2019 (REVISED)

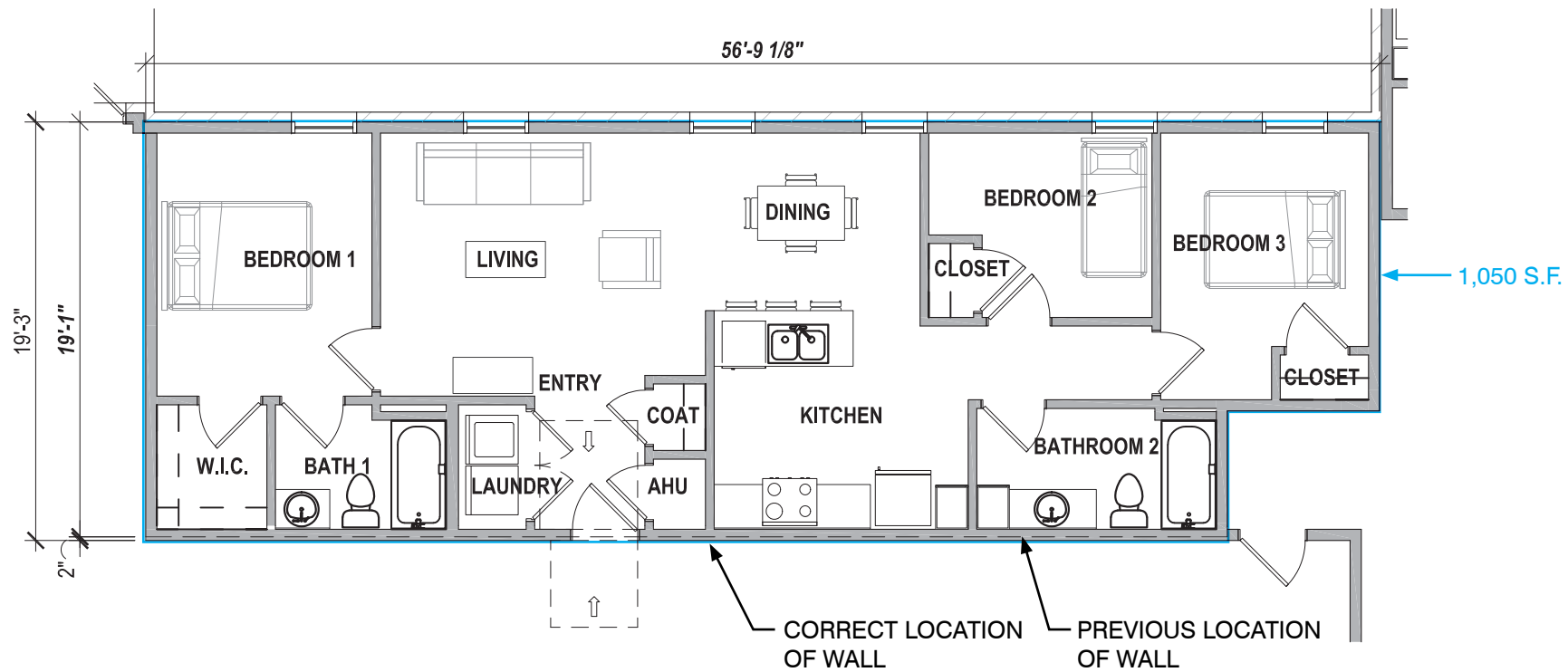
Furr out removed



THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

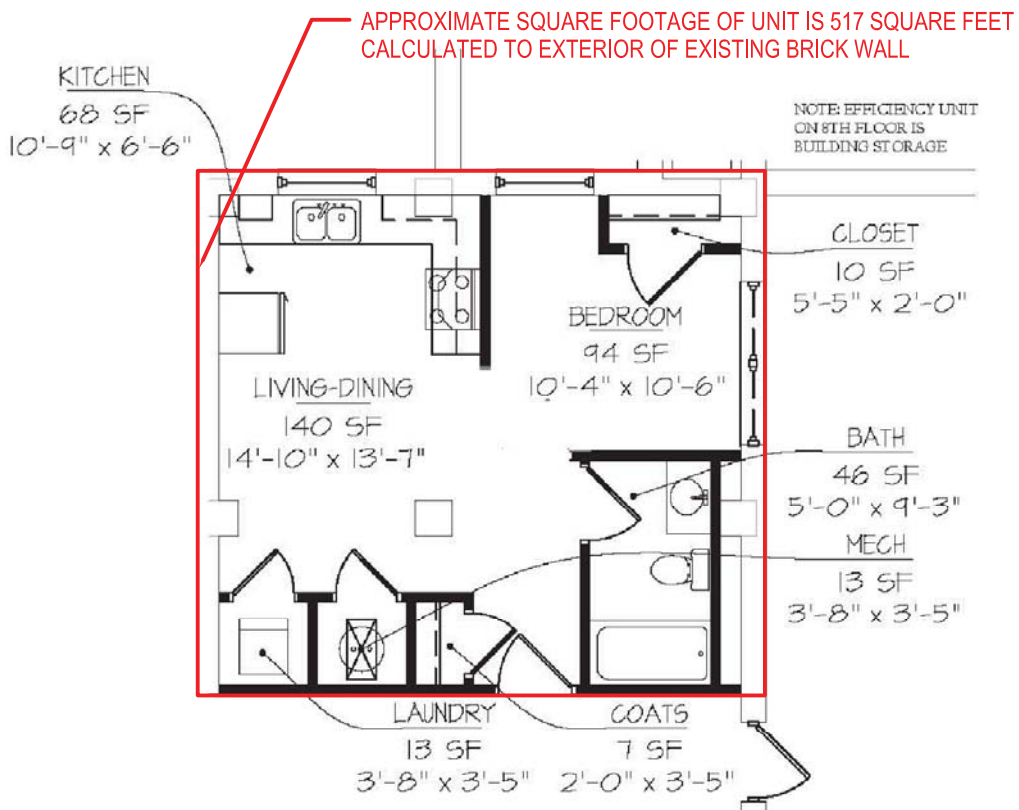


THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

UNIT C-2 FLOOR PLAN



517 SF

INTERIOR FLOOR FINISH
SUMMARY:
CARPET = 25%±
SHEET VINYL = 15%±
VINYL PLANK = 60%±

513 SF MEASURED
OUTSIDE EXISTING WALL
AND NEW WALL

SCALE: 1/8" = 1'-0"

FEBRUARY 2016

THIRD THRU EIGHTH FLOOR TYP. EFFICIENCY 1-BR UNIT



MRE Capital, LLC

CONRAD LOFTS RENOVATION

Plainview, Texas



EXHIBIT 4

Previously successful award where square footage was calculated to exterior of existing masonry wall



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May 7, 2019

Sharon D. Gamble MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St.
Austin, TX 78701

RE: Response to RRAD dated May 6, 2019 for #19013 Our Lady of Charity

Ms. Gamble,

This letter and certification are in response to the deficiency issued for TDHCA application #19013, Our Lady of Charity, related to the unit sizes and square footage threshold requirements under 10 TAC § 11.9(b)(1)(A) of the Qualified Action Plan. Please refer to the following narrative for each unit type and the attached drawings for supportive information to clarify the unit sizes and square footages in question. Please note that our calculations and application design drawings are based on extensive measured architectural and engineering drawings from the 1999 remodel, field verified by Alamo Architects.

Units E-1, E-3, E-4, and E-6

The unit plans submitted with the application showed dimensions to the inside of the load-bearing wall (stud). 10 TAC § 11.1(d)(82) requires that the net square footage be calculated to the outside of the stud (structural system). In the case of this existing historic building, the structural system is multi-wythe load-bearing brick masonry rather than a wood stud. This information is depicted in the building plans and has been added to the unit plan drawings for clarification to show that each of the units in question is in alignment with the square footages listed on the unit plan sheets and elsewhere in the application.

Unit E-7, E-8, E-10, E-11

As above except that the existing load bearing masonry walls are depicted on the unit plan drawings. Supplemental dimensions are provided to clarify that these units are in alignment with square footages listed on the unit plan sheets and elsewhere in the application.

Unit C-1 and Unit C-2

There was an error transmitted from our CAD file drawing to the PDF print provided in the original package. The correct wall dimension is shown on the revised sheets. No changes were made to the square footage, layout, nor the overall building footprint on unit types C-1 and C-2. Both unit types meet the minimum square footage requirements under section 10 TAC § 11.9(b)(1)(A) of the Qualified Action Plan. These units are new construction so the net square footage is calculated to the outside face of stud.

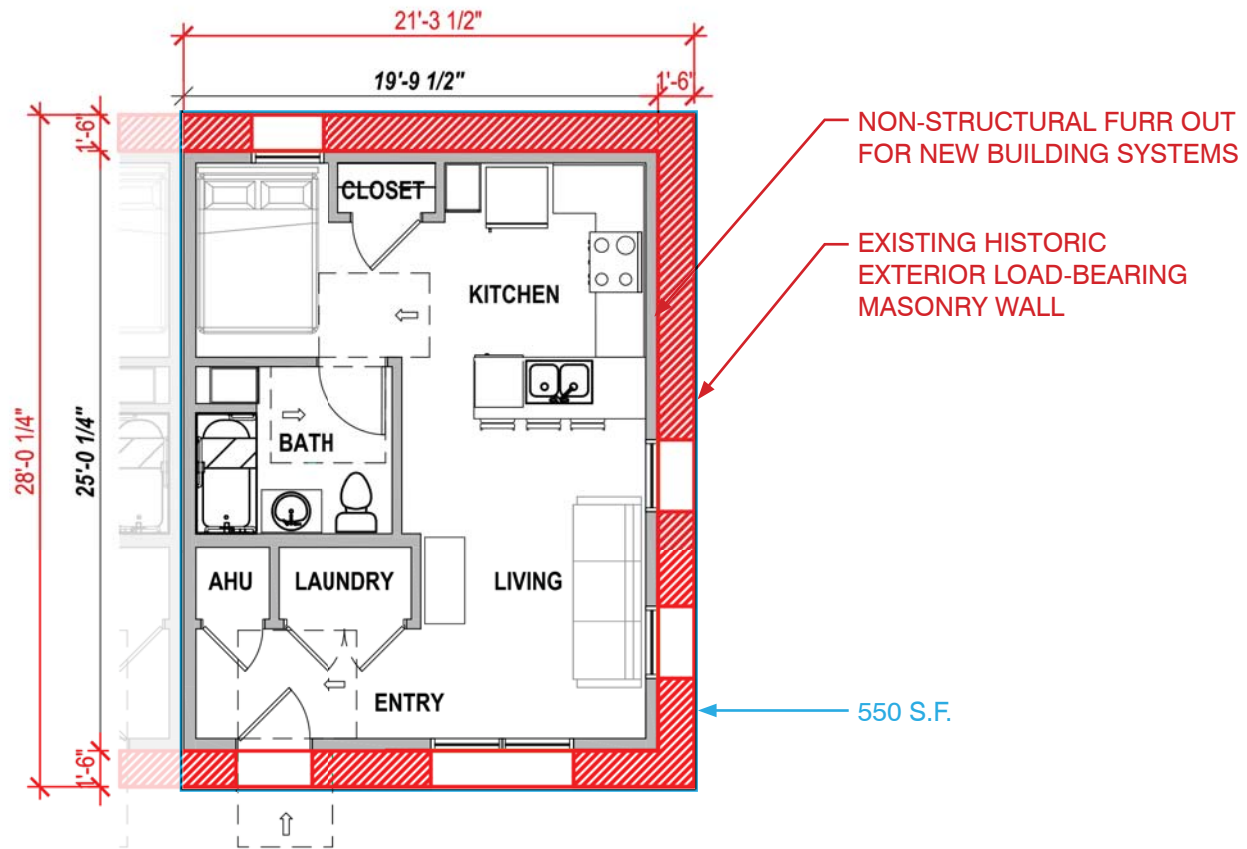
As a licensed Architect in the State of Texas, I certify that all units will meet the minimum requirements of the 2019 Qualified Allocation Plan, and that all supportive information provided in this response will not alter or change the Unit Mix, Project Summary, Development Cost Schedule, Building Configuration Form and pro forma for application #19013.

Thank you,

A handwritten signature in black ink, appearing to read "Jim Bailey", with a long horizontal line extending to the right.

Jim Bailey
Alamo Architects





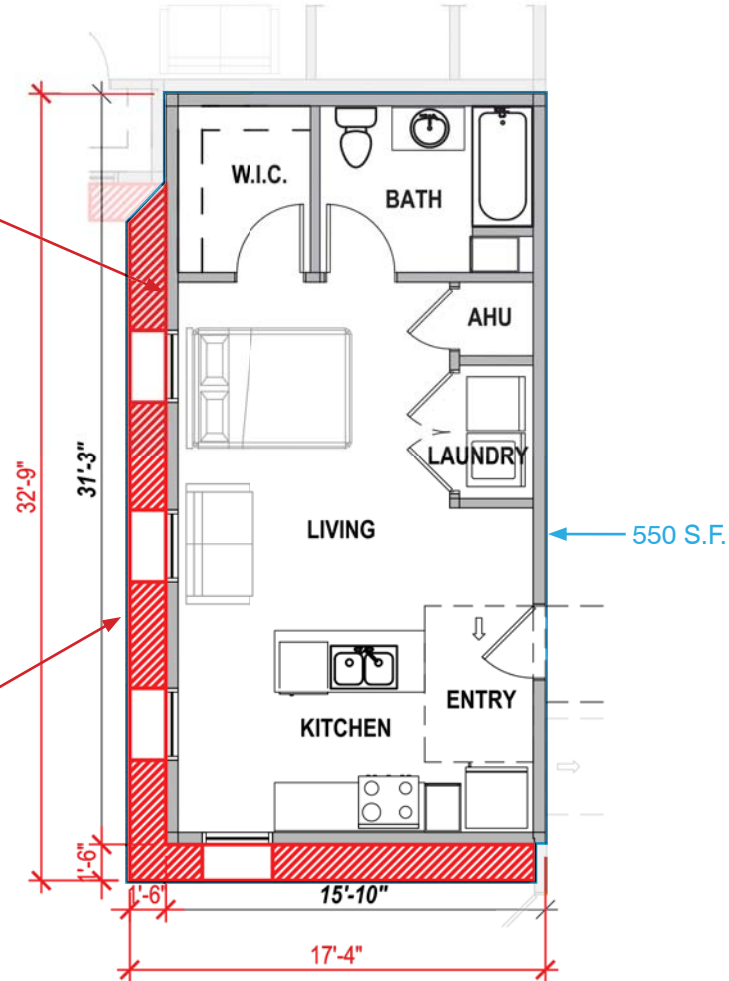
STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

NON-STRUCTURAL FURR OUT FOR NEW BUILDING SYSTEMS

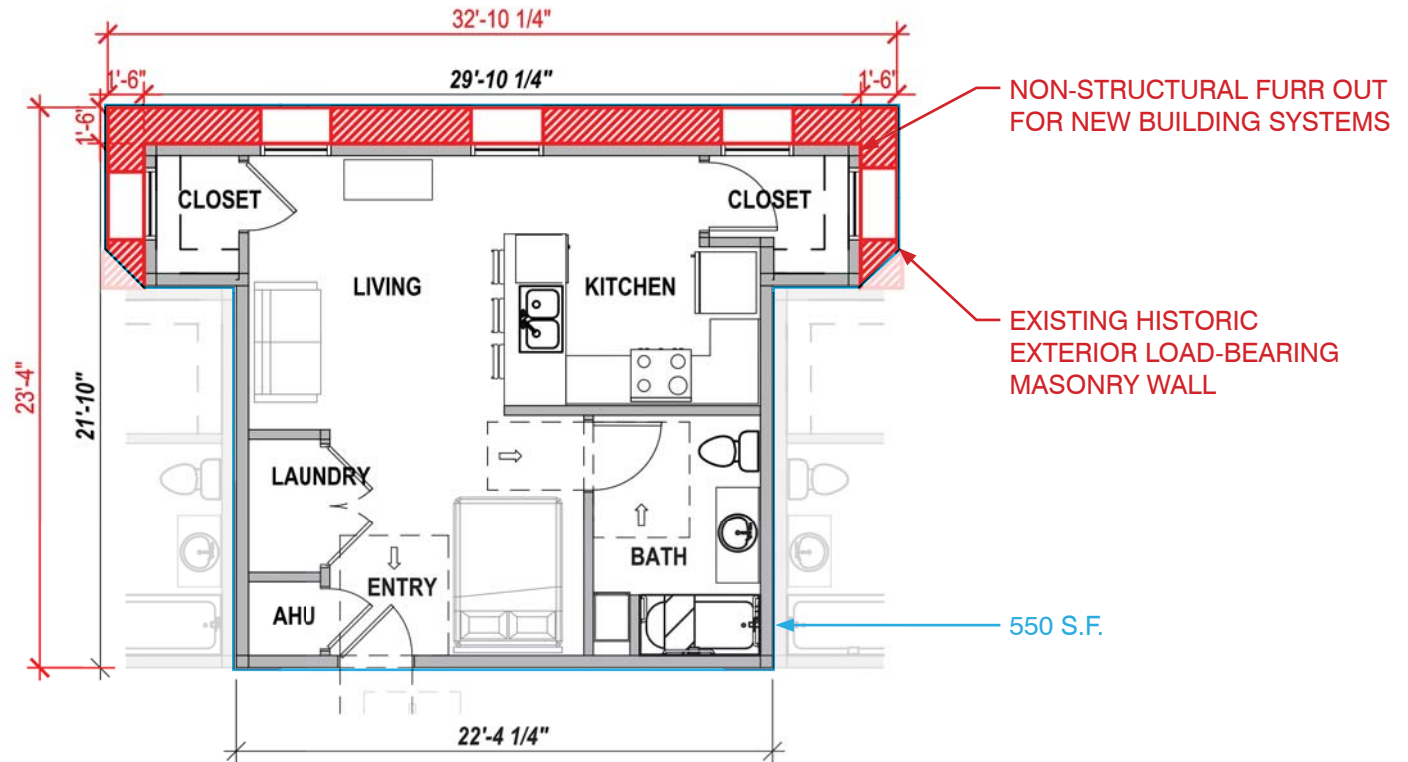
EXISTING HISTORIC EXTERIOR LOAD-BEARING MASONRY WALL



STUDIO, ONE BATH

550 S.F.

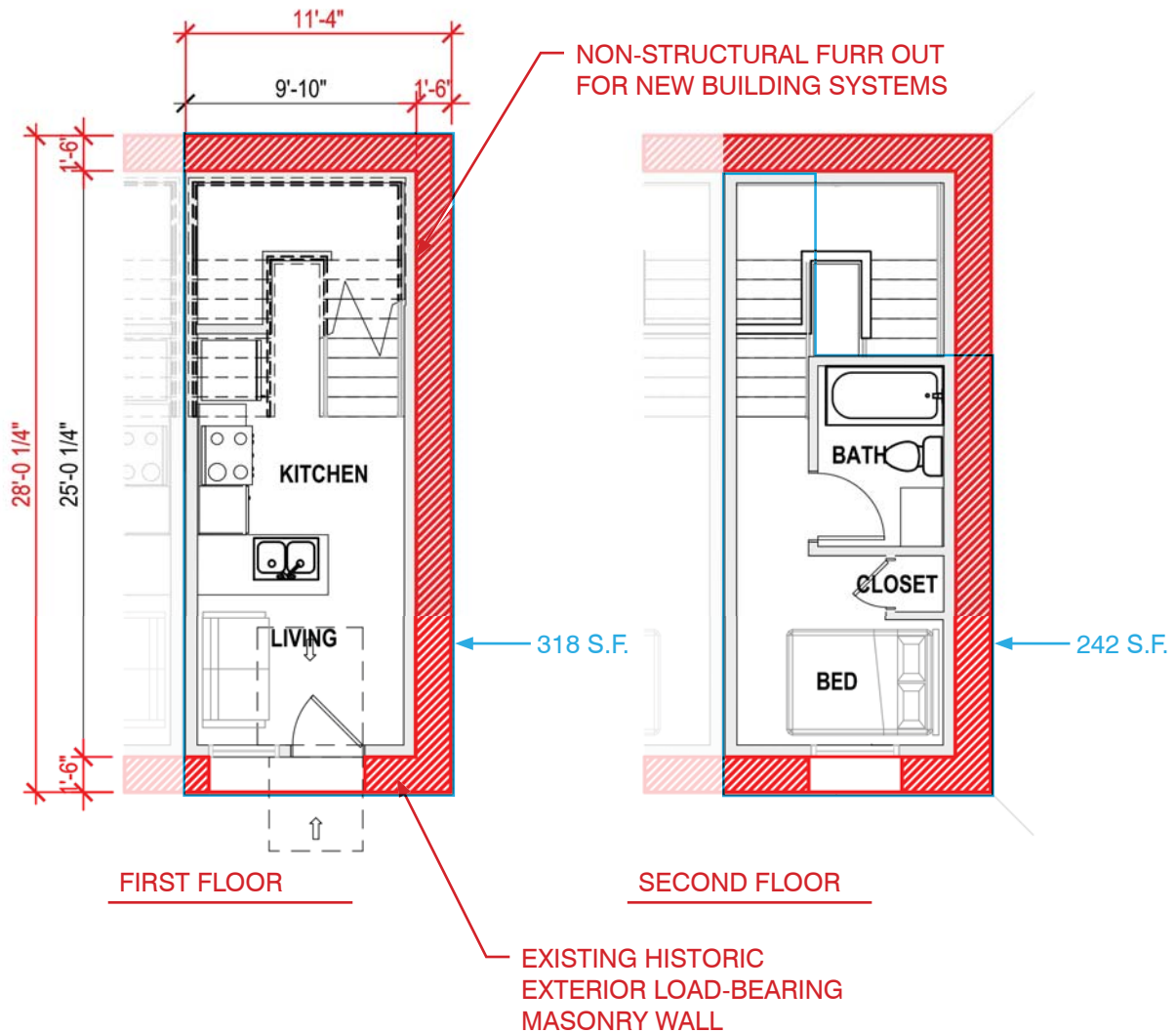
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STUDIO, ONE BATH

550 S.F.

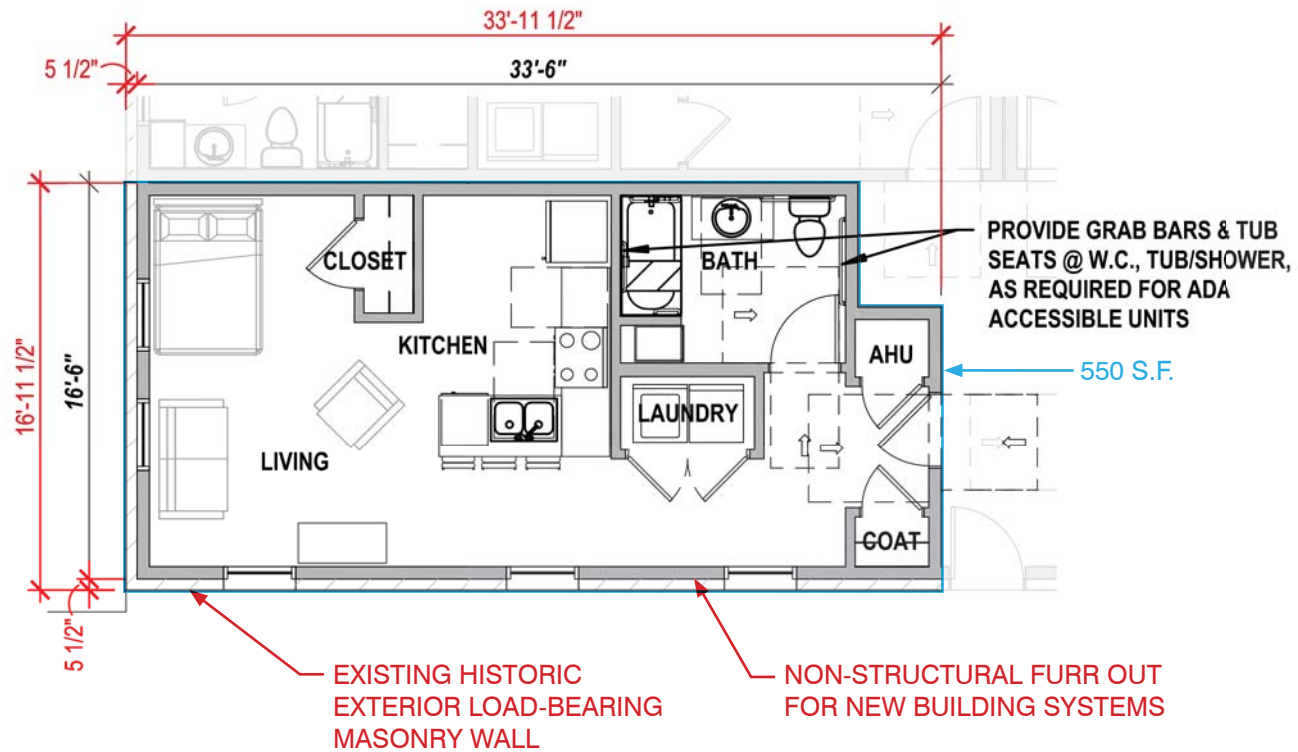
SCALE: 1/8" = 1'-0"



STUDIO, ONE BATH

560 S.F.

SCALE: 1/8" = 1'-0"



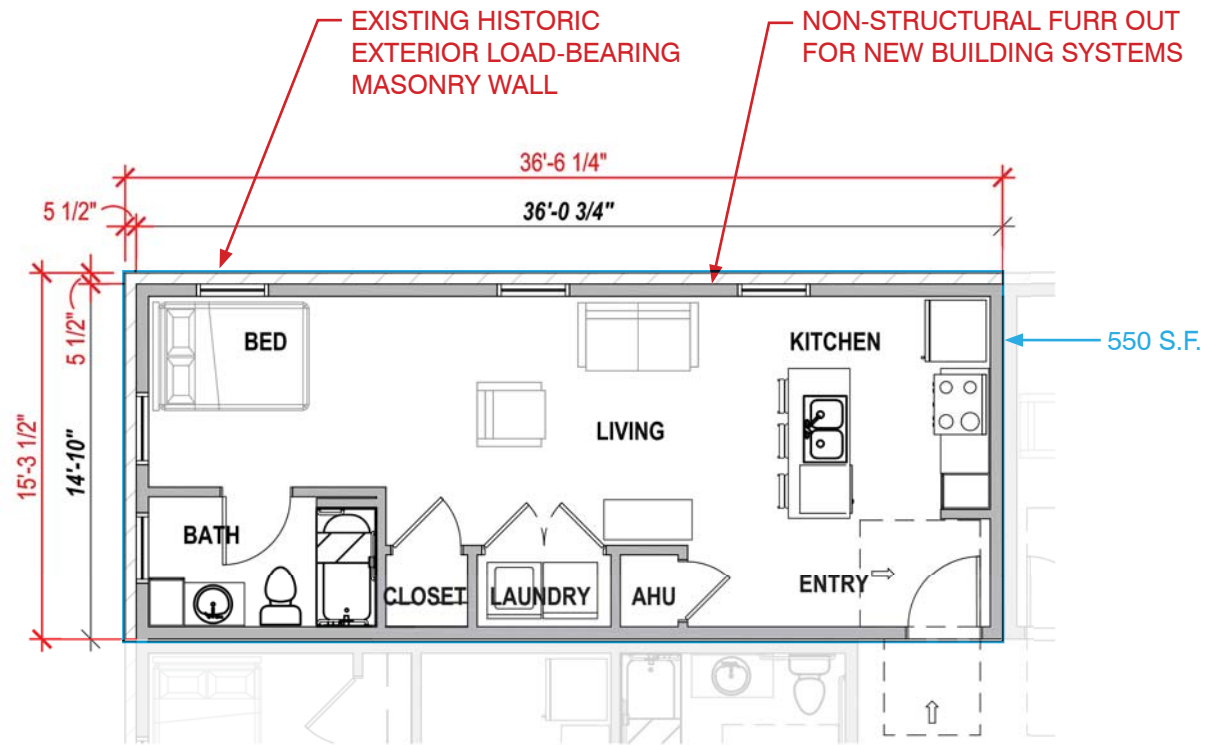
STUDIO, ONE BATH

550 S.F.

NOTE: ACCESSIBILITY NOTES REFER TO FULLY ACCESSIBLE UNITS.

SCALE: 1/8" = 1'-0"

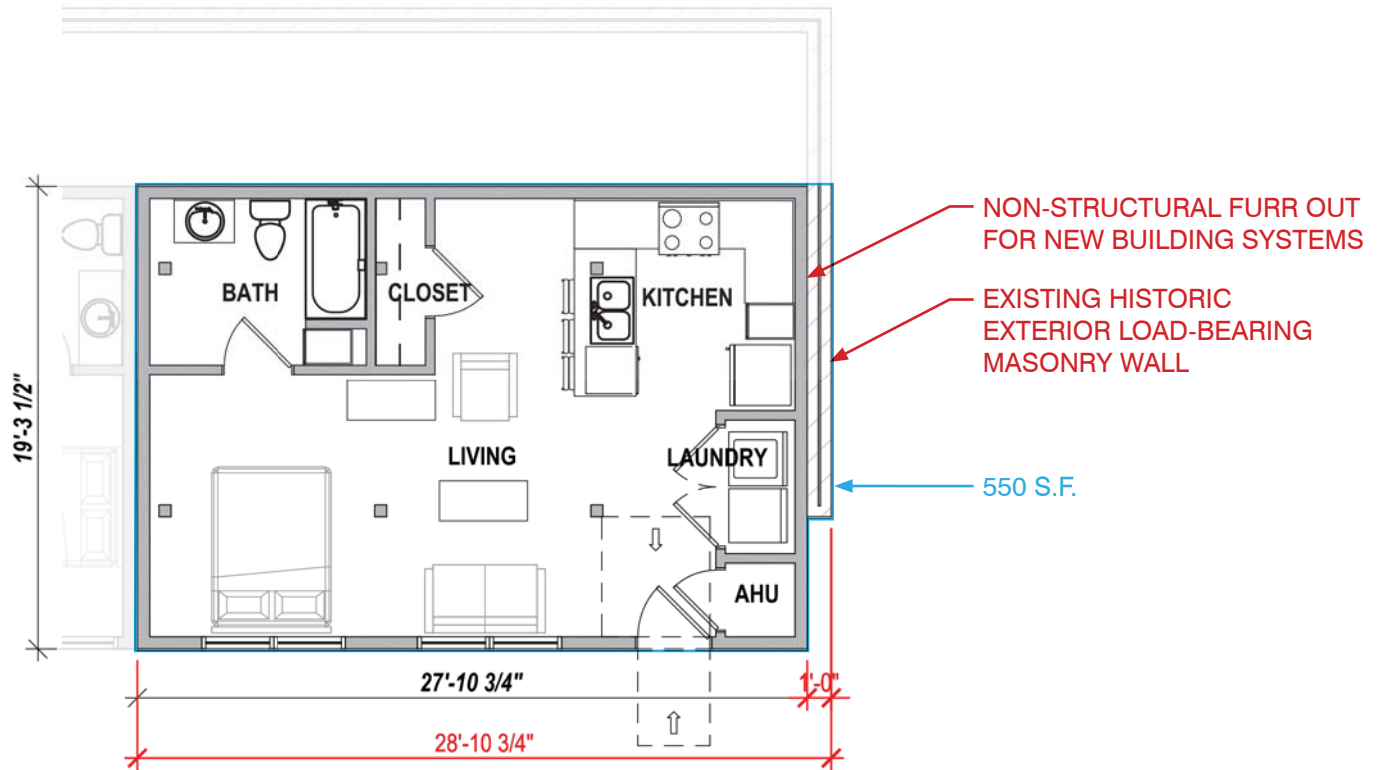
UNIT E-7 FLOOR PLAN



STUDIO, ONE BATH

550 S.F.

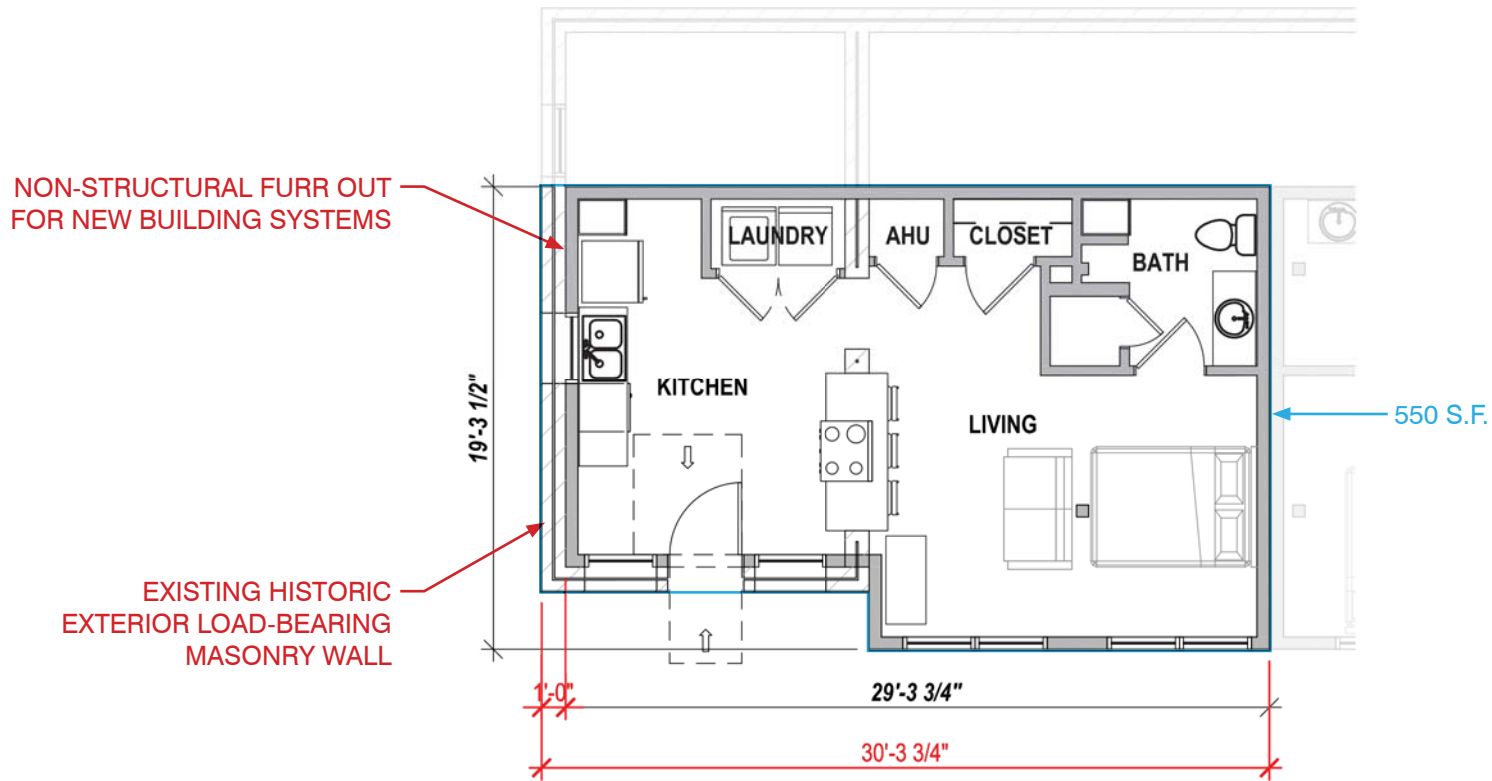
SCALE: 1/8" = 1'-0"



STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

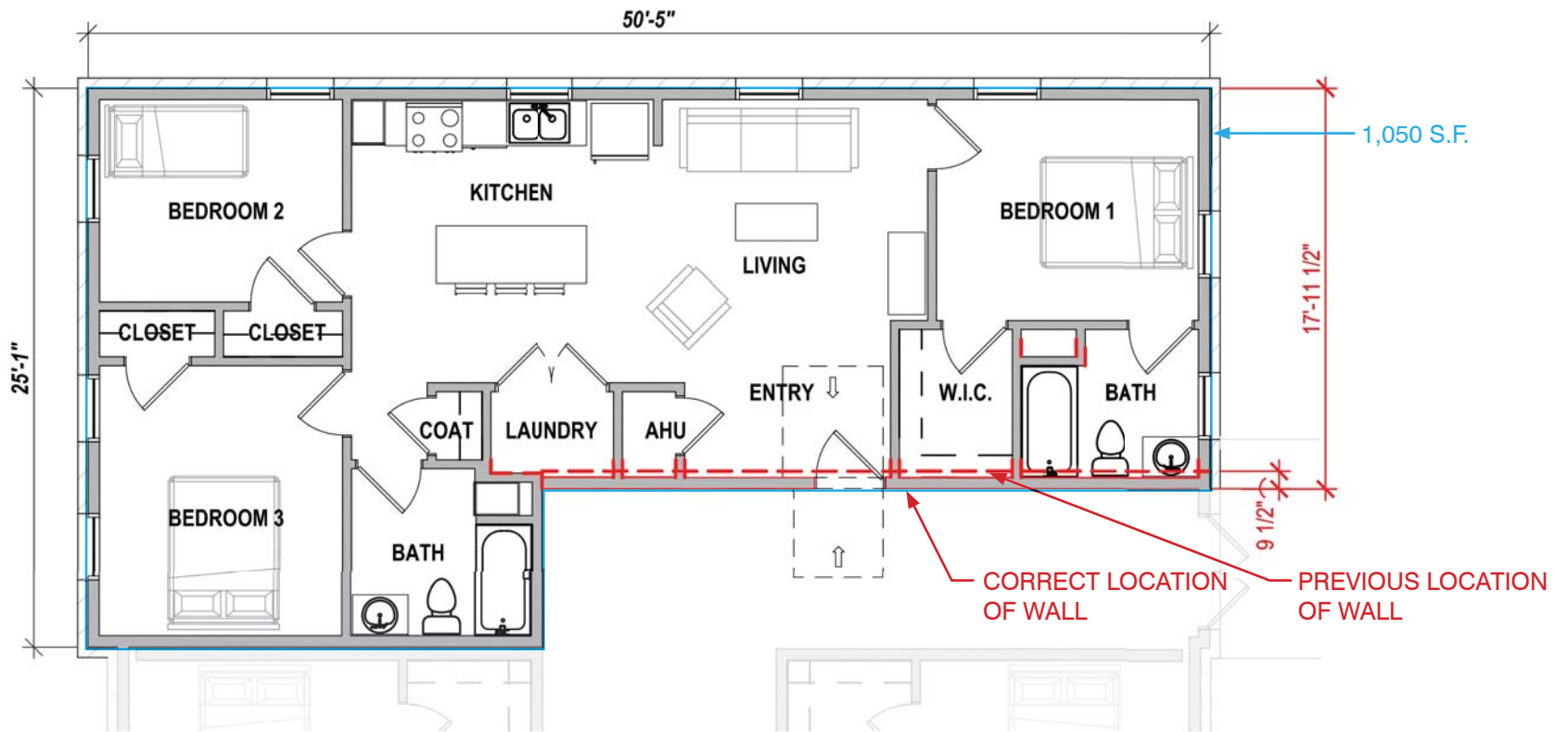


STUDIO, ONE BATH

550 S.F.

SCALE: 1/8" = 1'-0"

UNIT E-11 FLOOR PLAN

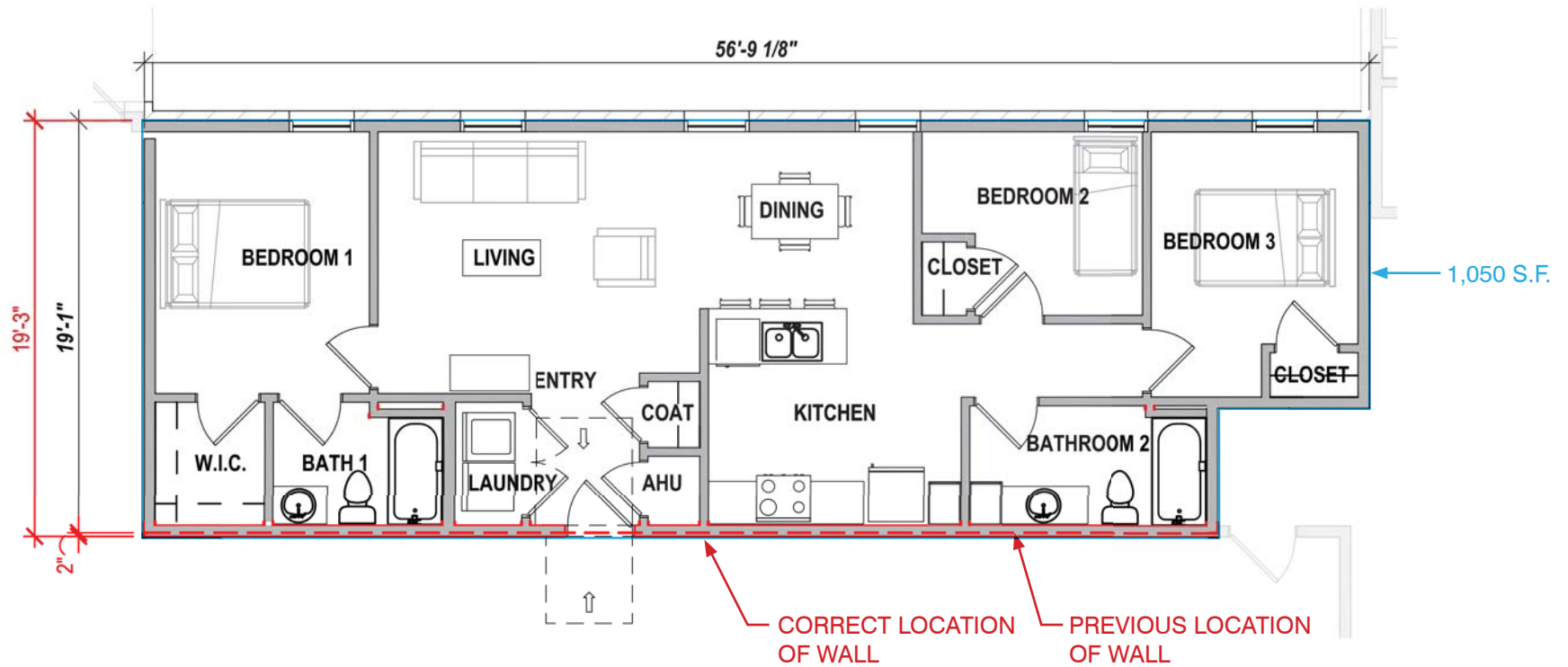


THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

UNIT C-1 FLOOR PLAN



THREE BEDROOM, TWO BATH

1,050 S.F.

SCALE: 1/8" = 1'-0"

UNIT C-2 FLOOR PLAN

TDHCA Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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June 17, 2019

Writer's direct dial: 512/475-1676
Email: david.cervantes@tdhca.state.tx.us

Timothy Alcott
San Antonio Housing Authority
818 S. Flores Street
San Antonio, TX 78204

RE: APPEAL OF TERMINATION OF 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19013 OUR LADY OF CHARITY, SAN ANTONIO

Dear Mr. Alcott:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your appeal, received on June 4, 2019, regarding the application submission indicated above. Staff had determined, based on the physical dimensions presented in the Application, that the E-1, E-3, and E-6 Efficiency Unit floor plans, on their face, failed to meet the New Construction threshold for Unit sizes described in 10 TAC §11.101(b)(6)(A). Per the rule:

Unit Sizes. Developments proposing New Construction or Reconstruction will be required to meet the minimum sizes of Units as provided in clauses (i) - (v) of this subparagraph. These minimum requirements are not associated with any selection criteria. Developments proposing Rehabilitation (excluding Reconstruction) or Supportive Housing Developments will not be subject to the requirements of this subparagraph.

- (i) five hundred (500) square feet for an Efficiency Unit;
- (ii) six hundred (600) square feet for a one Bedroom Unit;
- (iii) eight hundred (800) square feet for a two Bedroom Unit;
- (iv) one thousand (1,000) square feet for a three Bedroom Unit; and
- (v) one thousand, two-hundred (1,200) square feet for a four Bedroom Unit.

The Applicant previously provided a response to a deficiency notice that included Unit plans with a "non-structural furr out" for some of the Units and that changed the location of the wall in others. The appeal states that this information "may have been misinterpreted due to technical and design elements presented in the drawings," and clarifies that the Units will have no studs and the net rentable area (NRA)



is measured to the existing outside wall. The appeal asserts that there is a “gap” in the rules in that the “QAP and Multifamily Rules do not provide clear language and/or guidance in determining NRA for historic buildings nor do they provide for necessary preservation of existing load bearing walls in historic projects.” Staff points out that though the Unit plans provided in the appeal are labeled “before” and “after,” this is actually the third set of plans for the E-1, E-3, and E-6 Efficiency Units submitted: those from the Application (which did not include the “non-structural ‘furr out’ walls as the appeal claims), those from the deficiency response (which introduced the “non-structural ‘furr out’ walls), and now these.

The Department does not believe that there is a gap in the rules. The rules clearly explain how NRA is to be uniformly measured and makes no exceptions for historical projects. That the walls will not have studs, as the appeal claims, does not mean that the Development is absolved from having to comply with the rules. The definition in the rule makes it clear that “net rentable area” includes the area that serves the Unit and an allowance in the calculation of square footage for a little extra, i.e., the width of the stud to which the wall surface is attached. Indeed, the rule definition of NRA specifically excludes “other areas not actually available to the tenants for their furnishings, [and does not] include the enclosing of walls for such areas.” In the plans submitted with the deficiency response and the appeal, the Units include in the NRA the “furr out” walls as well as space behind them, and the entire width of the masonry to the exterior of the structure. The applicant seeks to calculate the area inside such 18 inch walls as part of NRA. However, these furr out walls, regardless of whether they are structural, would clearly define the limits of area available to the tenant for their furnishings. Indeed, the plans submitted with the Application actually show how furnishings are located to the interior of the furr out walls, and calculated the dimensions accordingly.

During the design phase of the Development, it may be that the interior adjoining walls of the Units could have been located so that the plans for the Units would meet the required square footages. However, the appeal asks the Department to allow for a measurement different from the one submitted with the Application – adding the distance to the outside of 18 inch walls, meaning that the tenant would be deprived of over 50 square feet of net rentable area, for which they pay rent, in the E-1 and E-3 Units, and vastly more in the E-6 Unit.

The appeal cites staff’s treatment of a previous historical project as an example of staff accepting this kind of NRA calculation in the past. Staff reviewed Conrad Lofts (#16034) and found that the plans include the note “SF measured outside existing wall and new wall,” and that the NRA may have been measured to the outside of the existing wall. Staff observes on this 2016 application that the unit dimensions that bear this note show 1 bedroom plans with 785 square feet, 2 bedroom plans with 1,096 square feet, and 3 bedroom plans with 1,339 square feet. Even accounting for the potential misuse of an exterior wall as part of the square footage, the plans to this 2016 application showed dimensions considerably in excess of minimum square footage threshold standards. Here, the Application plans show square footage under the threshold. Staff used the dimensions noted on the plans submitted with the Application, compared them with the applicable threshold rule, and has sought to hold the Application to the rules.

I do not find that the issues raised in your appeal clearly demonstrate that the Application should not be terminated, and accordingly I must deny the appeal. If you are not satisfied with this decision, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instruction on the appeals process. . Please note that §11.902(f) of the 2019 QAP and Tex. Gov’t Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application. Should you

19013 APPEAL RESPONSE

June 17, 2019

Page 3

have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cervantes". The signature is stylized with a large initial "D" and a long horizontal stroke.

David Cervantes

Acting Director

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on timely filed appeal of scoring in HTC Application 19126, 3104 Division Lofts under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) application 19126, 3104 Division Lofts, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, pursuant to 10 TAC §11.201(7) related to the Deficiency Process, unless an extension has been timely requested and granted, if a deficiency is not fully resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then five points shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved;

WHEREAS, staff determined that because the Applicant failed to respond to a deficiency notice until the seventh business day following the date of the deficiency notice, ten (10) points should be deducted from the selection criteria score;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Acting Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal for 19126, 3104 Division Lofts is hereby denied.

BACKGROUND

10 TAC §11.201(7) (the Rule), related to the Deficiency Process, identifies the time limitations for an Applicant to respond to deficiency notices issued by the Department. For the competitive (9%) HTC program, an Applicant has until 5:00 p.m. on the fifth business day to clear all deficiencies to the Department's satisfaction. After that period, an Application may incur penalties for a late response at a rate of five points per day from the fifth business day until the seventh business day. Per the rule, after the seventh business day, the Application shall be terminated.

The Application proposes the New Construction of 75 units for a general population in Arlington.

In the appeal, the Applicant states that the reason the response was late is that the deficiency notice was not received. Per the appeal, “deficiency notices state that the recipient should ‘acknowledge receipt.’ All TDHCA deficiencies have a standard endnote that says, ‘Please respond to this email as confirmation of receipt.’ Furthermore, the subject line contains the same instruction ‘Please reply immediately acknowledging receipt.’ . . . Generally, it is customary that a Staff person who does not receive an acknowledgement from an Applicant calls that Applicant to make sure they received the notice. While I understand this is not a requirement of the rules, it is a courtesy that has been extended to numerous Applicants over the years, but one that did not occur in this case.”

The appeal asserts that “none of the items in the notice technically warrant a formal deficiency notice as the information was submitted with the Application. There was no lack of clarity or omission of information in the application. All four questions asked by Staff can be answered from information in the application, as submitted.” Regarding the grounds for appeal, the appeal states:

“Under Section 11.902 of the QAP, we may appeal ‘A determination regarding the Application’s satisfaction of applicable requirements’ and ‘Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant’s proposal.’”

Staff issued a deficiency notice via email to the first and second contacts of the Applicant on May 13, 2019, and the response was due to the Department by 5:00 p.m. on May 20, 2019. On May 22, 2019, after not receiving a response from the Applicant, staff contacted the Applicant regarding the notice. In the appeal, the Applicant states that the May 22 correspondence was the first time that they received the notice because the May 13 email was not received by them. However, Department staff verified through our Information Services Division that “the message left our servers and we either received a notification of successful delivery or (more likely) simply did not receive any notification of a bounce back or error message from their mail server.”

The evidence submitted with the appeal is a spreadsheet maintained by the contact for the Applicant that is manually updated following its receipt of a deficiency, and affidavits stating that both the first and second individuals who were sent the deficiency email on May 13 did not receive the email on May 13, and could not find a record of the email in any of their individual electronic folders. Staff notes however, that based on the deficiency tracking log the Applicant submitted with its response, other deficiency e-mail notices from the Department were successfully received by this office regularly before and after the notice on May 13th was sent. Further, there is no technical evidence submitted by the Applicant to show that this notice was not actually received by the recipients’ e-mail server.

As to the issue of whether the administrative deficiency should have been issued at all, staff is clearly within the rules to request clarification of matters expressed in the application, to issue

administrative deficiencies, and expect a timely response. In this case, the following deficiencies were noted:

1. The legal description in the Title Commitment did not appear to match the legal description in the Contract and in Exhibit A of the Contract. In the response, the Applicant clarified that the contract used the legal description from the Tarrant County Appraisal District and the Title Commitment used the legal description from the deed records. Based on the information submitted with the response, staff determined that the response was sufficient to clear the deficiency.
2. The Application did not include Previous Participation forms for two entities listed in the Organizational Charts. In the response, the Applicant provided the forms for the two entities. Based on the information submitted with the response, staff determined that the response was sufficient to clear the deficiency.
3. The number of hearing/visual accessible Units indicated on the application calculation form was not consistent with the Site Plan and building plans. In the response, the Applicant revised the calculation form to be consistent with the architectural plans. Based on the information submitted with the response, staff determined that the response was sufficient to clear the deficiency.
4. The number of amenities listed on the application calculation form was not consistent with the Site Plan, and the number carports that must be accessible did not appear to match the Site Plan. In the response, the Applicant revised the calculation form to account for two additional amenities (staff notes that the listing of these amenities is required, though the Applicant stated that it was not). The number of accessible carports indicated on the Site Plan did match the number on the calculation form.

Staff recommends the Board deny the appeal.

19126

3104 Division Lofts

Scoring Notice



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*
Leslie Bingham-Escareño, *Vice Chair*
Paul A. Braden, *Member*
Asusena Reséndiz, *Member*
Sharon Thomason, *Member*
Leo Vasquez, *Member*

May 30, 2019

Writer's direct dial: (512) 936-7834
Email: sharon.gamble@tdhca.state.tx.us

Sarah Andre
Structure Development
1301 Chicon Street, Unit 101
Austin, TX 78702

RE: NOTICE OF SCORING ADJUSTMENT: 19126 3104 DIVISION LOFTS, ARLINGTON

Dear Ms. Andre:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of the Application named above. Staff issued a deficiency notice via email to the first and second contacts of the Applicant on May 13, 2019, and the response was due to the Department by 5:00 p.m. on May 20, 2019. On May 22, 2019, after not receiving a response from the Applicant, staff contacted the Applicant regarding the notice. The Applicant stated that the deficiency notice was not received by the Applicant, and cleared all of the deficiencies. Information Services staff at the Department checked the outbound logs and found no evidence that the message did not send. Because the deficiency notice was cleared to the Department's satisfaction on the sixth business day following the date of the deficiency notice, ten (10) points have been deducted from the selection criteria score, subject to your ability to appeal.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §11.902 of the 2019 QAP. If you wish to appeal this decision to the Executive Director, the appeal must be filed, in writing, with the Department not later than seven (7) calendar days after the date of this notification. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs.

If you have questions or require further information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "SD Gamble".

Sharon D. Gamble
Competitive HTC Administrator



Administrative Deficiency Documents

From: [Nicole Fisher](#)
To: "Sarah Andre"; "Rebecca Broadbent"
Subject: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Date: Monday, May 13, 2019 4:06:18 PM
Importance: High

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

- . Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.
- . Tab 39. Previous Participation: Please submit a form for each entity on the org charts.
- . Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes.
- . Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn't match the site plan.

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if

the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §§11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

****All deficiencies must be corrected or clarified by 5 pm Austin local time on Monday, May 20, 2019. Please respond to this email as confirmation of receipt.****

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

Nicole Fisher

Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.2201
Fax: 512.475.1895

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: [Victor Martinez](#)
To: [Edgar Terminal](#)
Cc: [Sharon Gamble](#); [Nicole Fisher](#)
Subject: RE: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Date: Thursday, May 30, 2019 3:42:35 PM

So the two lines to look at are the:

Final Rule outbound_clean

And

stat=Sent (OK 1557781581 g15si19099032pgk.260 - gsmt)

These indicate that the message left our servers and we either received a notification of successful delivery or (more likely) simply did not receive any notification of a bounce back or error message from their mail server.

Looking at responses from the same domain, we're not identifying any incoming messages that indicate a failure or quarantine on their end for this particular email thread.

From: Victor Martinez
Sent: Thursday, May 30, 2019 3:37 PM
To: Edgar Terminal <edgar.terminal@tdhca.state.tx.us>
Subject: FW: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.

From: Victor Martinez
Sent: Thursday, May 30, 2019 3:36 PM
To: Nicole Fisher <nicole.fisher@tdhca.state.tx.us>
Cc: Sharon Gamble <sharon.gamble@tdhca.state.tx.us>
Subject: RE: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.

Field	Value	MTA Log
QID	x4DL5HI9003007	
SID	2sdu230uxf	
Message ID	3F43A78213EAE64D8D632016330ABB5B01946E46@snoopy.tdhca.state.tx.us	
Recipients	rebecca@structuretexas.com , sarah@structuretexas.com	
Sender Hostname	mx0.tdhca.state.tx.us	
Sender IP Address	168.39.87.5	
Server Instance	m0117311.pops.net-10000_instance1	
GUID	EhA9n0Q7mzXpHox7AyWHRR9eSGJ4lk0u	
Sub-Org		
Module ID	av, spam	
Policy Routes	allow_relay, firewallsafe,outbound	
Quarantine Rule		
Final Rule	outbound_clean	
Duration	0.359527	
Quarantine Folder		
Spam Score	0	
Virus Names		
TLS	AES256-SHA	
Message Size (Bytes)	25198	
Attachment Names	text.txt, text.html	

- 2019-05-13T16:06:20.057216-05:00 m0117311 sendmail[3007]: x4DL5HI9003007: from=<nicole.fisher@tdhca.state.tx.us>, size=24752, class=0, nrcpts=2, msgid=<3F43A78213EAE64D8D632016330ABB5B01946E46@snoopy.tdhca.state.tx.us>, proto=SMTP, daemon=MTA, tls_verify=NONE, auth=NONE, relay=m0117311.pops.net [127.0.0.1]
- 2019-05-13T16:06:21.213399-05:00 m0117311 sendmail[3708]: x4DL5HI9003007: to=<sarah@structuretexas.com>, <rebecca@structuretexas.com>, delay=00:00:01, xdelay=00:00:01, mailer=esmtpl, tls_verify=OK, pri=174752, relay=aspmx.l.google.com. [74.125.195.26], dsn=2.0.0, stat=Sent (OK 1557781581 g15si19099032pgk.260 - gsmt)

From: Nicole Fisher <nicole.fisher@tdhca.state.tx.us>
Sent: Thursday, May 30, 2019 3:18 PM
To: Help Desk <helpdesk@tdhca.state.tx.us>
Cc: Sharon Gamble <sharon.gamble@tdhca.state.tx.us>
Subject: FW: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Importance: High

Please check to make sure that this email was successfully sent and provide us with any documentation you can.

Thank you,

Nicole Fisher
Housing Specialist
Texas Department of Housing and Community Affairs
Office: 512.475.2201

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: Nicole Fisher
Sent: Monday, May 13, 2019 4:06 PM

To: 'Sarah Andre' <sarah@structuretexas.com>; 'Rebecca Broadbent' <rebecca@structuretexas.com>
Subject: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Importance: High

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

- Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.
- Tab 39. Previous Participation: Please submit a form for each entity on the org charts.
- Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes.
- Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn't match the site plan.

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

****All deficiencies must be corrected or clarified by 5 pm Austin local time on Monday, May 20, 2019. Please respond to this email as confirmation of receipt.****

About TDHCA

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Nicole Fisher
Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.2201
Fax: 512.475.1895

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).



May 22, 2019

Ms. Nicole Fisher
 Texas Department of Housing and Community Affairs
 221 East 11th Street
 Austin, TX 78701

Via: nicole.fisher@tdhca.state.tx.us

Re: 3104 Division Lofts, Arlington, Application #19126

Dear Ms. Fisher:

Your email sent today at 12:11 is the first that we have seen of the deficiency “dated May 13, 2019”. We did not receive it until today May 22, 2019 as demonstrated by our lack of acknowledgement. We have gathered the requested items and included attached in this response.

1. Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.

Both legal descriptions are referring to the same 7.35 acres. The contract utilized the legal description from Tarrant County Appraisal District and the Title Commitment utilized the legal description from the deed records. Attached are excerpts from the two documents highlighting the same descriptions. I’ve also included a the Tarrant County tax card and Application survey. By following the legal description in the title commitment you can draw the 7.35 acre polygon shown on the survey and included in the contract.

Should TDHCA require a revised title commitment, we respectfully request time for the third party to make this revision.

2. Tab 39. Previous Participation: Please submit a form for each entity on the org charts.

Please see attached previous participation forms for 3104 Division Lofts Ltd and 3104 Division Lofts GP, LLC.

3. Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes.

Please see attached revised tab 23b showing a total of three Audio/Visual units. This matches the architectural plans.

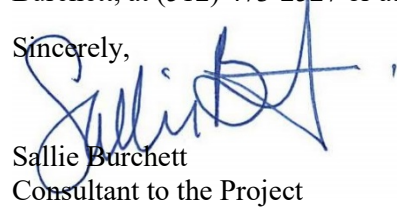
4. Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn’t match the site plan.

The Leasing Office is inside the Community Center. This is the only amenity that has parking that does not also serve the dwelling units. As such, it is the only amenity that is required to be listed separately on Tab 23c.

The Tab 23c shows 4 APSs are required for carports. The Site Plan also shows 4 carport APSs. See attached site plan with those four spots circled in red.

Please let us know if you have any further questions or require further documentation by contacting Sallie Burchett, at (512) 473-2527 or at sarah@structuretexas.com. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sallie Burchett', with a stylized flourish extending to the right.

Sallie Burchett
Consultant to the Project

FIRST AMENDMENT TO CONTRACT OF SALE

THIS FIRST AMENDMENT TO CONTRACT OF SALE (this "Amendment") is made and entered into as of the 8th day of February, 2019 (the "Effective Date") by and between **THE GENE EDWARD BEARD FAMILY LIMITED PARTNERSHIP**, a Texas limited partnership, and **THE LORENE JANE BEARD FAMILY LIMITED PARTNERSHIP**, a Texas limited partnership (collectively, "Seller"), and **NRP PROPERTIES LLC**, an Ohio limited liability company ("Purchaser").

RECITALS:

- A. Purchaser and the Beard Family Ltd Partnership, as "Seller", are parties to that certain Contract of Sale dated as of November 29, 2018 (the "Contract"), for the purchase of approximately 7.35 acres of real property located at 3104 W Division Street, in the City of Arlington, Tarrant County, Texas and known as Parcel No. A 153-1A02 of the Tarrant County Appraisal District tax records (the "Property").
- B. Seller and Purchaser hereby acknowledge and agree that the first paragraph of the Contract incorrectly, and contrary to the parties' intent, states the name of the seller entity as "BEARD FAMILY LTD PARTNERSHIP."
- C. Seller and Purchaser desire to amend the Contract as provided herein.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, Seller and Purchaser do hereby agree as follows:

AGREEMENT

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings ascribed to such terms in the Contract.
2. Seller Entity. The first paragraph of the Contract is hereby deleted in its entirety and replaced with the following:

"THIS CONTRACT OF SALE (the "Contract") is made between **THE GENE EDWARD BEARD FAMILY LIMITED PARTNERSHIP**, a Texas limited partnership, and **THE LORENE JANE BEARD FAMILY LIMITED PARTNERSHIP**, a Texas limited partnership (collectively, "Seller"), and **NRP PROPERTIES LLC**, an Ohio limited liability company, and/or assigns ("Purchaser"), who, in consideration of the agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:"

3. Multifamily Direct Loan. The following shall be added to the Contract as Article 9.2:

9.2 TDHCA Environmental Review. Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and

EXHIBIT "A"

LEGAL DESCRIPTION

Legal Description BRINSON MATTHEW SURVEY ABSTRACT 153 TRACT 1A2 & 2

County TARRANT Parcel No. (APN) A 153 -1A02 --20

FIPS Code 48439 Alternative APN A 153-1A02

Census Tract/Block 111505 / 1 Legal Book/Page

Township-Range-Sect -- Map Ref

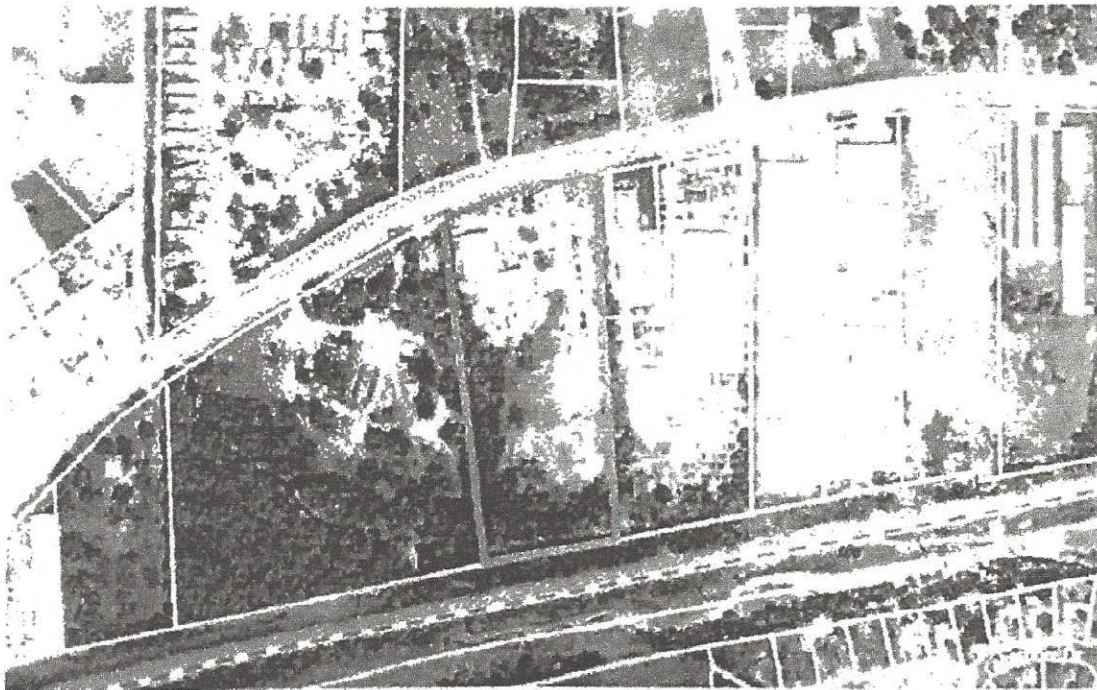
Legal Land Lot School District ARLINGTON INDEPENDENT SCHOOL DISTRICT

Legal Block

Subdivision BRINSON MATTHEW SURVEY ABSTRACT Property Characteristics

Assessor Acreage 7.35

Building Area (SF) 19,940



COMMITMENT FOR TITLE INSURANCE
SCHEDULE A

File No. 18000230109	Effective Date: February 06, 2019 at 8:00 AM
	Issued February 19, 2019 at 1:02 PM

1. The policy or policies to be issued are:

- (a) OWNER'S POLICY OF TITLE INSURANCE (Form T-1)
(Not applicable for improved one-to-four family residential real estate)
Policy Amount: \$2,450,000.00
PROPOSED INSURED: 3104 Division Lofts Ltd., a to-be-formed Texas limited partnership.
- (b) TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE
--ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
Policy Amount: \$
PROPOSED INSURED:
- (c) LOAN POLICY OF TITLE INSURANCE (Form T-2)
Policy Amount: \$
PROPOSED INSURED:
Proposed Borrower:
- (d) TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)
Policy Amount: \$
PROPOSED INSURED:
Proposed Borrower:
- (e) LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
Binder Amount: \$
PROPOSED INSURED:
Proposed Borrower:
- (f) OTHER -
Policy Amount: \$
PROPOSED INSURED:

2. The interest in the land covered by this Commitment is:

Fee Simple

3. Record title to the land on the Effective Date appears to be vested in:

[The Gene Edward Beard Family Limited Partnership, a Texas limited partnership](#) and [The Lorene Jane Beard Family Limited Partnership, a Texas limited partnership](#)

4. Legal description of the land:

Situated in Tarrant County, Texas, and being out of the M. Brinson Survey, Abstract No. 153 in Tarrant County, Texas, as described as follows:

THE WEST ONE-HALF of the following described tract, to-wit:

Beginning at the point on the N. ROW line of the T & P Railroad 776. feet Northeasterly from the SW corner of a 25.25 acre tract conveyed as 3rd tract in Sheriff's Deed from Joe Goldberg et al to J. W. Draughon by deed dated 11/1/31 and recorded in Vol. 1177, Page 149, said point also being the SE corner of a tract conveyed by O'Della Draughon, Individually and as Independent Executrix of the Estate of J. W. Draughon, deceased, to H E. Horn by deed dated 1/20/45 and recorded in [Vol. 1686, Page 237](#), Deed Records, Tarrant County, Texas, and said point being SW corner of the tract herein described;

Thence N. 78 deg, East with the N. line of said Railroad ROW 679.0' to an iron pin at fence, corner for the SE corner of tract herein described;

Thence N. 0 deg. 36 min. East with fence 890.8' to iron pin at fence corner of tract herein described and being the S. ROW line of Highway 80;

Thence S. 78 deg. 23 min. West with the S. ROW line of said Highway;

Thence Southwesterly on curve to the left and with the S. ROW of said Highway 271' to an iron pipe at fence corner for the NW corner of tract herein described;

Thence S. 6 deg. 39 min. East with fence 854' to the Place of Beginning and containing 14.7 acres of land, more or less.

The west one half of 14.7 acres is 7.35 acres



TARRANT APPRAISAL DISTRICT

05/22/2019

Account #: 03761819
Georeference: A 153-1A02
Property Location: 3104 W DIVISION ST

Jurisdictions:
024 CITY OF ARLINGTON
220 TARRANT COUNTY
901 ARLINGTON ISD
224 TARRANT COUNTY HOSPITAL
225 TARRANT COUNTY COLLEGE

Owner Information
BEARD FAMILY LTD PARTNERSHIP
176 FRIAR TUCK WAY
KERRVILLE, TX 78028-9672

5-Year Value History

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TAD's database.

Table with 5 columns: Year, Improvement Market, Land Market, Total Market, Total Appraised †. Rows for years 2015 to 2019.

A zero value indicates that the property record has not yet been completed for the indicated tax year
† Appraised value may be less than market value due to state-mandated limitations on value increases

Property Data

Legal Description: BRINSON, MATTHEW SURVEY
Abstract 153 Tract 1A2 & 2
Deed Date: 08-08-1994
Deed Page: 0001840
Deed Volume: 0001840
Instrument: 00116980001840
State Code: F1 Commercial
Agent: SOUTHLAND PROPERTY TAX CONSULT

Site Number: 80263062
Site Name: 3104 W DIVISION ST
Class: ACRepair - Auto Care-Repair Garage
of Parcels: 1
Primary Building:
Building Name: 3104 W DIVISION ST / 03761819
Building Type: Commercial
Year Built: 1960

Notice Sent: 04-15-2019
Protest Deadline: 05-15-2019

Gross Building Area ††: 19,940
Net Leasable Area ††: 19,940
Land Sqft ♦: 320,166
Land Acres ♦: 7.3500

†† Rounded
♦ This represents one of a hierarchy of possible values ranked in the following order: Recorded, Computed, System, Calculated

Exemptions

Accessible Hearing/Visual Units Calculation

Include this worksheet in the Application (or a signed and certified worksheet provided by your accessibility professional that shows the calculations).

To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

- (1) Distributed throughout the Unit types AND the Development; and
- (2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

Multifamily Housing Developments covered by 10 TAC 11.101(b)(8)(A) must have a minimum of 5% of all units in the development set aside for the mobility impaired **and an additional 2%** must be set aside for the hearing and/or visually impaired.

Hearing/Visual	Total Units	Required %	Calculated Units	Units Required (Rounded)	Units Proposed
Unit Description	75	2%	1.5	2	3
A1	6	2%	0.12	1	1
B1	51	2%	1.02	1.02	1
C1	18	2%	0.36	1	1
		2%	0	0	
		2%	0	0	
	75		1.5	3.02	3

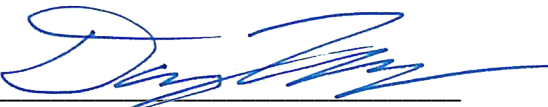
***NOTE:** If total is more than what is required, Applicant will select which to include under "Units Proposed"

EXAMPLE

Hearing/Visual	Total Units	Required %	Calculated Units	Units Required (Rounded)	Units Proposed
Unit Description	68	2%	1.36	2	2
1/1	28	2%	0.56	1	1
2/2	36	2%	0.72	1	1
3/3	4	2%	0.08	1	
D		2%	0	0	
E		2%	0	0	
	68		1.36	3	2

***NOTE:** Required is 2, but calculation yields 3. Applicant selected which Unit(s) to include under "Units Proposed"

By signing below, I (WE) certify that the information above meets the requirements in Section 504 of the Rehabilitation Act of 1973 and implemented at 24 C.F.R. Part 8 as described in 10 TAC Chapter 1, Subchapter B. At least two percent (2%) of all dwelling units will be designed and built to be accessible for persons with hearing and/or visual impairment.

By: 
Signature

Danny Baker

Printed Name

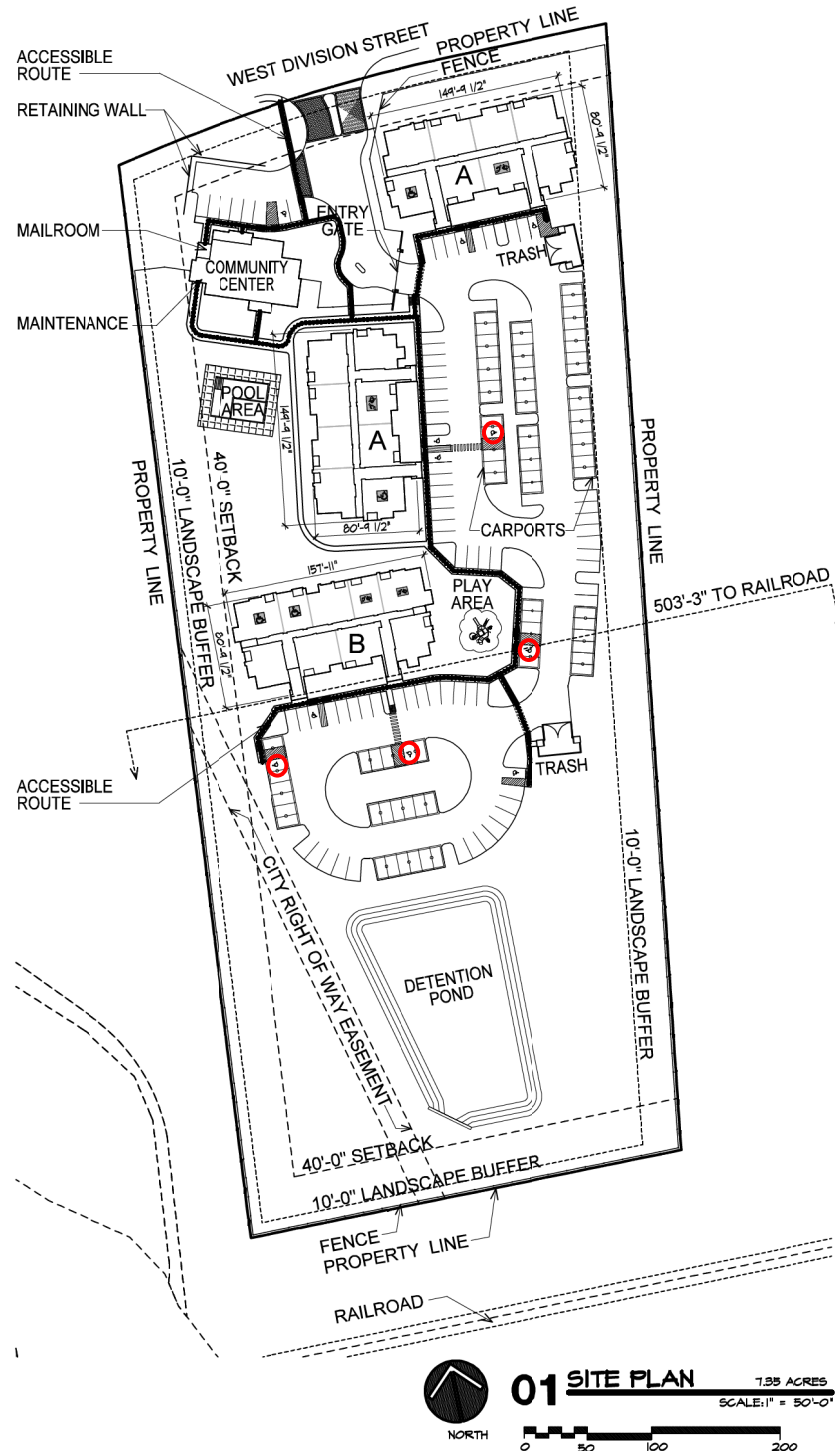
May 22, 2019

Date

Womack+Hampton Architects, LLC

Firm Name (If applicable)

- GENERAL NOTES
1. 30% 50% & 60% UNIT DESIGNATIONS WILL BE DISPERSED ACROSS ALL UNIT TYPES IN A MANNER THAT DOES NOT VIOLATE FAIR HOUSING LAWS
 2. NO PORTION OF THE SITE IS LOCATED WITHIN THE RECORDED 100 YEAR F.E.M.A. FLOODPLAIN.
 3. NO PIPELINE EASEMENTS ARE LOCATED WITHIN THE SITE.



PROJECT NET AREA SUMMARY					
UNIT	DESCRIPTION	% OF UNITS	NO. OF UNITS	SQ. FT.	TOTAL SQ. FT.
UNIT A1	1 BEDROOM / 1 BATH		5	662	3,310
UNIT A1 ACC	1 BEDROOM / 1 BATH		1	662	662
	TOTAL TYPE A	8.00%	6		3,972
UNIT B1	2 BEDROOM / 2 BATH		49	919	45,031
UNIT B1 ACC	2 BEDROOM / 2 BATH		2	919	1,838
	TOTAL TYPE B	68.00%	51		46,869
UNIT C1	3 BEDROOM / 2 BATH		17	1,067	18,139
UNIT C1 ACC	3 BEDROOM / 2 BATH		1	1,067	1,067
	TOTAL TYPE C	24.00%	18		19,206
TOTAL UNITS			75		70,047
				Unit Avg. Sq. Ft.	986
COMMUNITY CENTER (RESIDENT USE AREA)					3,506
PROJECT TOTAL					73,553
FULLY ACCESSIBLE UNITS REQ. = 5% OF TOTAL					4 UNITS
SIGHT AND HEARING UNITS REQ. = 2% OF TOTAL					2 UNITS

PARKING	
PARKING RATIO	2.11 SPACES / UNIT
APARTMENT - SURFACE STANDARD PARKING	66 SPACES
APARTMENT - SURFACE HC PARKING	6 SPACES
APARTMENT - CARPORT STANDARD PARKING	74 SPACES
APARTMENT - CARPORT HC PARKING	4 SPACES
APARTMENT - SUBTOTAL PARKING	150 SPACES
COMMUNITY CTR/LEASING - STANDARD PARKING	7 SPACES
COMMUNITY CTR/LEASING - HC PARKING	1 SPACE
COMMUNITY CTR/LEASING - SUBTOTAL PARKING	8 SPACES
TOTAL PARKING	158 SPACES

01 SITE PLAN 7.35 ACRES
SCALE: 1" = 50'-0"

Womack + Hampton
ARCHITECTS, L.L.C.
4311 Oak Lawn Ave., Suite 50 Phone (214) 252-9000
Dallas, Texas 75219 Fax (214) 252-9080

3104 W. DIVISION
Arlington, Texas
3104 Division Lofts Ltd

Sheet Title:
SITE PLAN

Date:
2/27/2019

Project Number:
19004

Sheet Number:
A1.1

Accessible Parking Calculation

Submit this worksheet or a comparable document certified by an accessibility professional .

Although Fair Housing Standards may apply in unusual circumstances, ADA Standards typically determine the required number of Accessible Parking Spaces (APSs). This worksheet is intended to handle typical (ADA) cases, where all parking spaces are within a single parking lot. However, it might be possible to determine the APS requirements of multiple lots (or facilities) by completing this same worksheet for each of the lots. The worksheet might also be usable for Developments with less than one parking space to serve each dwelling unit, by filling in the information on page one, bypassing inapplicable spaces in the first section of page two, and completing the second section of page two, "Distribution of APSs Among the Various Types of Parking", referencing ADA Table 208.2. In unique cases where Fair Housing applies, or where this worksheet cannot be applied, create a certification specifying the types and numbers of the parking spaces applicable, including standard and accessible parking for dwelling units and amenities (e.g., office, mail kiosk, laundry, dumpster, pool, playground, etc., collectively, "amenities"), and for each type of parking facility, e.g., surface spaces, carports, garages, etc., for staff review. Links to the applicable accessibility rules are provided below.

ADA Design Manual, Ch. 2, Sec. 208: [-https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf](https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf)

FHA Design Manual Page 2.23: [-https://www.huduser.gov/publications/pdf/fairhousing/fairch2.pdf](https://www.huduser.gov/publications/pdf/fairhousing/fairch2.pdf)

Accessible Parking for Facilities and Amenities

Determining the number of APSs that serve the dwelling units requires accounting for APSs that do not serve dwelling units. In the yellow spaces below, identify the individual amenities served by an APS. Groups of amenities in close proximity typically are allowed to share a single APS. If groups of amenities share one APS (or APSs), identify each such group. In the yellow space to the right of each of these identifications, state the number of APSs designated to serve the amenity or group identified. If parking is provided near dumpsters, at least 1 dumpster must have an APS. The total of these APSs will be subtracted from the total of all types of parking spaces to determine the number of parking spaces that serve the dwelling units and the APSs required for the dwelling units.

Amenity:	Identification of amenity, or amenities of a group, that the APS serves	APSs:
Office, etc.:	Leasing Office inside Community Center Building	1
Amenity 1:		
Amenity 2:		
Amenity 3:		
Amenity 4:		
Amenity 5:		
Amenity 6:		

Total of Accessible Parking Spaces that Do Not Serve Dwelling Units:

1

Accessible Parking for Residential Units

This portion of the worksheet was written for Developments having at least one parking space serving each dwelling unit,

having surface parking spaces as the APSs that are not for dwelling units, and having only one parking lot, i.e., none of the parking spaces are physically segregated from the others by gates or by curbs or other barriers that require vehicles to exit the Development to travel between separate parking lots that serve it. The worksheet might, or might not be, useful for other cases.

Enter the information indicated below.

Total dwelling Units in the Development:		<u>75</u>
Total surface parking spaces:		<u>80</u>
Total carports:		<u>78</u>
Total garages:		<u>0</u>
Total parking spaces of all types:	Calculated from above:	<u>158</u>
Total APSs that serve non-residential purposes (i.e. office, amenities, etc.):	Calculated on prior page:	<u>1</u>
Total of all types of parking spaces that serve dwelling units:	Calculated from above:	<u>157</u>
APSs for mobility accessible units (5% of unit count, if spaces are sufficient):	Calculated from above:	<u>4</u>
Parking spaces that serve dwelling units in excess of one per unit (if applicable):	Calculated from above:	<u>82</u>
APSs required in excess of one per mobility accessible unit:	Calculated from above:	<u>2</u>
Total APSs required (including dwelling units and facilities/amenities):	Calculated from above:	<u>7</u>

All Developments, including those having fewer than one parking space serving each dwelling unit, should use this portion of the worksheet. Enter the number of APSs indicated by ADA Table 208.2 for the total of each type of parking space, i.e., surface spaces, carports, etc., including both amenity spaces and dwelling unit spaces.

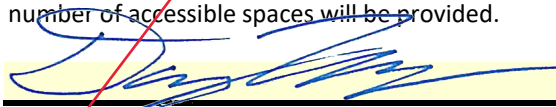
Distribution of APSs Among the Various Types of Parking

Minimum number of surface parking spaces (include dwelling unit <u>and</u> amenity spaces) that must be APSs:	<u>4</u>
Minimum number of carports that must be APSs:	<u>4</u>
Number of garages that must be APSs:	<u>0</u>

APSs that Must Be Van Spaces

Total Van APSs required, including all types of spaces:	Calculated from above:	<u>2</u>
Minimum number of surface parking spaces that must be van APSs:	Calculated from above:	<u>1</u>
Minimum number of carports that must be van APSs:	Calculated from above:	<u>1</u>
Minimum number of garages that must be van APSs:	Calculated from above:	<u>0</u>

By signing below, I (WE) certify that the information above meets the requirements in the 2010 ADA Standards for Accessible Design Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADA Accessibility Guidelines at 36 CFR part 1191, appendices B and D. There will be at least one accessible parking space per accessible unit located on the closest route to the accessible unit. For every 6 or fraction of 6 accessible spaces required, at least one will be van accessible. Accessible spaces will be dispersed amongst the parking types provided. Where parking for amenities or non-residents is provided, a sufficient number of accessible spaces will be provided.



 Signature
Danny Baker

 Printed Name

February 22, 2019

 Date:
Womack+Hampton Architects, LLC

 Firm Name (if applicable)

Accessible Parking Calculation

Submit this worksheet or a comparable document certified by an accessibility professional .

Although Fair Housing Standards may apply in unusual circumstances, ADA Standards typically determine the required number of Accessible Parking Spaces (APSs). This worksheet is intended to handle typical (ADA) cases, where all parking spaces are within a single parking lot. However, it might be possible to determine the APS requirements of multiple lots (or facilities) by completing this same worksheet for each of the lots. The worksheet might also be usable for Developments with less than one parking space to serve each dwelling unit, by filling in the information on page one, bypassing inapplicable spaces in the first section of page two, and completing the second section of page two, "Distribution of APSs Among the Various Types of Parking", referencing ADA Table 208.2. In unique cases where Fair Housing applies, or where this worksheet cannot be applied, create a certification specifying the types and numbers of the parking spaces applicable, including standard and accessible parking for dwelling units and amenities (e.g., office, mail kiosk, laundry, dumpster, pool, playground, etc., collectively, "amenities"), and for each type of parking facility, e.g., surface spaces, carports, garages, etc., for staff review. Links to the applicable accessibility rules are provided below.

ADA Design Manual, Ch. 2, Sec. 208: [-https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf](https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf)

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Amenity:	Identification of amenity, or amenities of a group, that the APS serves	APSs:
Office, etc.:	Leasing Office inside Community Center Building	1
Amenity 1:	Playground	1
Amenity 2:	Trash Area	1
Amenity 3:		
Amenity 4:		
Amenity 5:		
Amenity 6:		
Total of Accessible Parking Spaces that Do Not Serve Dwelling Units:		3

Accessible Parking for Residential Units

This portion of the worksheet was written for Developments having at least one parking space serving each dwelling unit, having surface parking spaces as the APSs that are not for dwelling units, and having only one parking lot, i.e., none of the parking spaces are physically segregated from the others by gates or by curbs or other barriers that require vehicles to exit the Development to travel between separate parking lots that serve it. The worksheet might, or might not be, useful for other cases.

Enter the information indicated below.

Total dwelling Units in the Development:		75
Total surface parking spaces:		80
Total carports:		78
Total garages:		0
Total parking spaces of all types:	Calculated from above:	158
Total APSs that serve non-residential purposes (i.e. office, amenities, etc.):	Calculated on prior page:	3
Total of all types of parking spaces that serve dwelling units:	Calculated from above:	155
APSs for mobility accessible units (5% of unit count, if spaces are sufficient):	Calculated from above:	4
Parking spaces that serve dwelling units in excess of one per unit (if applicable):	Calculated from above:	80
APSs required in excess of one per mobility accessible unit:	Calculated from above:	2
Total APSs required (including dwelling units and facilities/amenities):	Calculated from above:	9

All Developments, including those having fewer than one parking space serving each dwelling unit, should use this portion of the worksheet. Enter the number of APSs indicated by ADA Table 208.2 for the total of each type of parking space, i.e., surface spaces, carports, etc., including both amenity spaces and dwelling unit spaces.

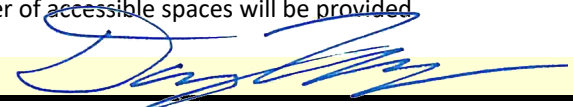
Distribution of APSs Among the Various Types of Parking

Minimum number of surface parking spaces (include dwelling unit <u>and</u> amenity spaces) that must be APSs:	4
Minimum number of carports that must be APSs:	4
Number of garages that must be APSs:	0

APSs that Must Be Van Spaces

Total Van APSs required, including all types of spaces:	Calculated from above:	2
Minimum number of surface parking spaces that must be van APSs:	Calculated from above:	1
Minimum number of carports that must be van APSs:	Calculated from above:	1
Minimum number of garages that must be van APSs:	Calculated from above:	0

By signing below, I (WE) certify that the information above meets the requirements in the 2010 ADA Standards for Accessible Design Title III regulations at 28 CFR part 36, subpart D, and the 2004 ADA Accessibility Guidelines at 36 CFR part 1191, appendices B and D. There will be at least one accessible parking space per accessible unit located on the closest route to the accessible unit. For every 6 or fraction of 6 accessible spaces required, at least one will be van accessible. Accessible spaces will be dispersed amongst the parking types provided. Where parking for amenities or non-residents is provided, a sufficient number of accessible spaces will be provided.



 Signature

 Danny Baker

 Printed Name

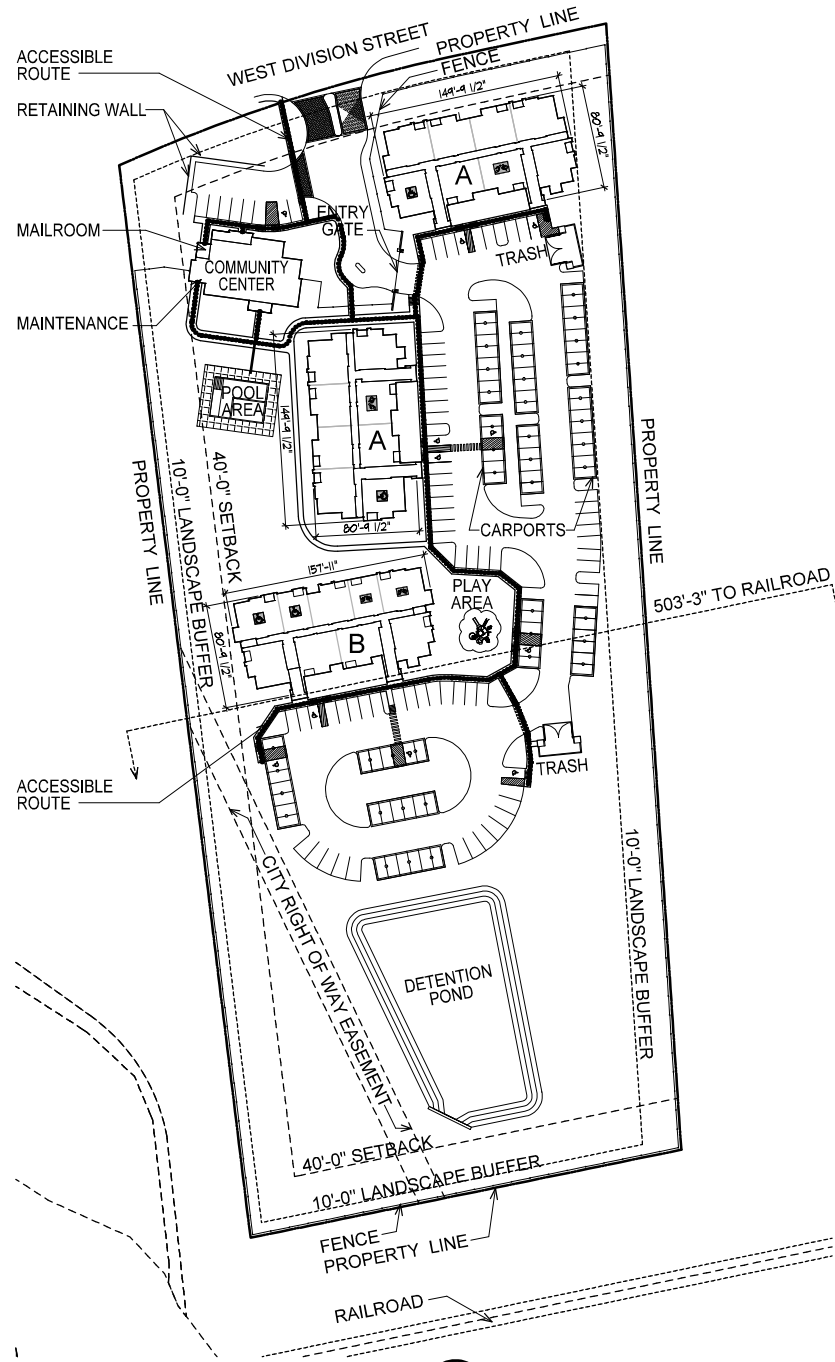
 22-Mar-19

 Date:

 Womack + Hampton Architects, LLC

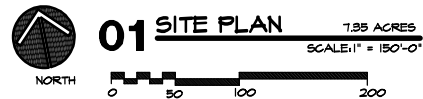
 Firm Name (if applicable)

- GENERAL NOTES
- 30%, 50% & 80% UNIT DESIGNATIONS WILL BE DISPERSED ACROSS ALL UNIT TYPES IN A MANNER THAT DOES NOT VIOLATE FAIR HOUSING LAWS
 - NO PORTION OF THE SITE IS LOCATED WITHIN THE RECORDED 100 YEAR F.E.M.A. FLOODPLAIN.
 - NO PIPELINE EASEMENTS ARE LOCATED WITHIN THE SITE.



PROJECT NET AREA SUMMARY					
UNIT	DESCRIPTION	% OF UNITS	NO. OF UNITS	SQ. FT.	TOTAL SQ. FT.
UNIT A1	1 BEDROOM / 1 BATH		5	662	3,310
UNIT A1 ACC	1 BEDROOM / 1 BATH		1	662	662
	TOTAL TYPE A	8.00%	6		3,972
UNIT B1	2 BEDROOM / 2 BATH		49	919	45,031
UNIT B1 ACC	2 BEDROOM / 2 BATH		2	919	1,838
	TOTAL TYPE B	68.00%	51		46,869
UNIT C1	3 BEDROOM / 2 BATH		17	1,067	18,139
UNIT C1 ACC	3 BEDROOM / 2 BATH		1	1,067	1,067
	TOTAL TYPE C	24.00%	18		19,206
TOTAL UNITS		100%	75		70,047
				Unit Avg. Sq. Ft.	986
COMMUNITY CENTER (RESIDENT USE AREA)					3,506
PROJECT TOTAL					73,553
FULLY ACCESSIBLE UNITS REQ. = 5% OF TOTAL					4 UNITS
SIGHT AND HEARING UNITS REQ. = 2% OF TOTAL					2 UNITS

PARKING	
PARKING RATIO	2.11 SPACES / UNIT
APARTMENT - SURFACE STANDARD PARKING	66 SPACES
APARTMENT - SURFACE HC PARKING	6 SPACES
APARTMENT - CARPORT STANDARD PARKING	74 SPACES
APARTMENT - CARPORT HC PARKING	4 SPACES
APARTMENT - SUBTOTAL PARKING	150 SPACES
COMMUNITY CTR/LEASING - STANDARD PARKING	7 SPACES
COMMUNITY CTR/LEASING - HC PARKING	1 SPACE
COMMUNITY CTR/LEASING - SUBTOTAL PARKING	8 SPACES
TOTAL PARKING	158 SPACES



Womack + Hampton
ARCHITECTS, L.L.C.
 4811 Oak Lawn Ave., Suite 50 Phone (214) 252-9000
 Dallas, Texas 75218 Fax (214) 252-9880



3104 W. DIVISION
 Arlington, Texas
 3104 Division Lofts Ltd

Sheet Title:
SITE PLAN

Date:
2/27/2019

Project Number:
19004

Sheet Number:

A1.1

Appeal Documents



June 5, 2019

Mr. David Cervantes, Acting Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Application # 19126, Division Lofts, Arlington, Texas

Dear Mr. Cervantes:

I am writing to appeal Staff's decision to deduct 10 points from the above referenced application. In a letter dated May 30, 2019, Staff stated that the applicant failed to reply to a deficiency notice in a timely manner and 5 points were deducted for each day past the customary 5-day deadline that the applicant failed to answer. Under Section 11.902 of the QAP, we may appeal "A determination regarding the Application's satisfaction of applicable requirements" and "Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal."

According to Staff, Nicole Fischer sent a deficiency notice on May 13, 2019 to Sarah Andre and Rebecca Broadbent. The first time either of us saw the deficiency was when Nicole Fischer sent a follow up email May 22, 2019 inquiring about the lack of response. Once we were made aware of Staff's inquiry, we responded within 2.5 hours. Please see Attachment A for a copy of the Deficiency Notice that we received on May 22. Attachment B includes an affidavit by myself and Rebecca Broadbent stating we did not receive the email and have completed an exhaustive search of all our inbox, spam, and trash email without finding the subject email.

First, I would like to point out that none of the items in the notice technically warrant a formal deficiency notice as the information was submitted with the Application. There was no lack of clarity or omission of information in the application. All four questions asked by Staff can be answered from information in the application, as submitted. See Attachment C for an analysis of this.

Second, this is not a case of neglect, avoidance or deceit on our part. We simply did not receive the notice, were therefore not aware of it and accordingly, took no action. As you know, deficiency notices state that the recipient should "acknowledge receipt." All TDHCA deficiencies have a standard endnote that says, "Please respond to this email as confirmation of receipt." Furthermore, the subject line contains the same instruction "Please reply immediately acknowledging receipt." In this case neither I nor Rebecca acknowledged receipt because neither of us received the notice. Generally, it is customary that a Staff person who does not receive an acknowledgement from an Applicant calls that Applicant to make sure they received the notice.

While I understand this is not a requirement of the rules, it is a courtesy that has been extended to numerous Applicants over the years, but one that did not occur in this case. As evidenced by our immediate response to the follow up email regarding the deficiency, we would have responded rapidly upon learning that a notice had been sent out.

Our standard operating procedures for deficiencies are to 1) acknowledge receipt, 2) log the deficiency into a tracking document, 3) assign each item to a team member, 4) convene a team call to discuss the deficiency, 5) compile a response and turn it in 2 days before the firm deadline to allow time for any questions from Staff; 6) log transmittal of that response into the tracking document, and 7) confirm TDHCA receipt and log information into our tracking document. In all cases we acknowledge receipt, and, in many cases, we respond earlier than required and clear the deficiency early. As a show of our good faith efforts to respond when required, a PDF version of our tracking log is provided as Attachment D. This document goes back to the 2017 HTC cycle and has 69 deficiencies related to 27 Housing Tax Credit Applications, all of which were answered timely.

Our office has a long record of acknowledging and responding to deficiency notices. When reflecting upon the past 5 years, we were unable to cite one instance in which we did not respond in a timely manner to a 9% deficiency request. I hope that you will consider this track record as you reflect on this matter.

We believe that this is an item with little to no precedent in the Department's history. Moreover, technical glitches and failures to communicate are not particularly well addressed in the QAP. But they are common occurrences and a very real part of the human condition. I respectfully ask for your understanding in this issue and request that you reconsider the point deduction for this project. We simply cannot respond to an Administrative Deficiency that we do not receive.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah H. Andre", with a long horizontal flourish extending to the right.

Sarah H. Andre
Owner, East 43rd St., LLC dba Structure Development

ATTACHMENT A
Deficiency Notice, Correspondence Regarding Notice



Isabelle Atkinson <isabelle@structuretexas.com>

Fwd: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.

37 messages

Rebecca Broadbent <rebecca@structuretexas.com> Wed, May 22, 2019 at 12:35 PM
To: Sallie Burchett <sallie@structuretexas.com>, Isabelle Atkinson <isabelle@structuretexas.com>

Just received this email from Nicole Fisher. This is the first I have seen this deficiency, and I suspect that Sarah has not seen it either. It is not on our deficiency log. It looks like this needs to be addressed today. I'll start looking at it now.

----- Forwarded message -----

From: **Nicole Fisher** <nicole.fisher@tdhca.state.tx.us>
Date: Wed, May 22, 2019 at 12:11 PM
Subject: RE: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
To: Sarah Andre <sarah@structuretexas.com>, Rebecca Broadbent <rebecca@structuretexas.com>
Cc: Sharon Gamble <sharon.gamble@tdhca.state.tx.us>

Sarah,

Did you respond to this deficiency notice? I am not seeing a response on my end.

Today is the 7th business day and has already at a point loss of 10. If we do not receive a response by 5pm today, the application will be terminated.

Thanks,

Nicole Fisher

Housing Specialist
Texas Department of Housing and Community Affairs
Office: 512.475.2201

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: Nicole Fisher
Sent: Monday, May 13, 2019 4:06 PM
To: 'Sarah Andre' <sarah@structuretexas.com>; 'Rebecca Broadbent' <rebecca@structuretexas.com>
Subject: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Importance: High

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

1. Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.
2. Tab 39. Previous Participation: Please submit a form for each entity on the org charts.
3. Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes.

4. Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn't match the site plan.

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §§11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

****All deficiencies must be corrected or clarified by 5 pm Austin local time on Monday, May 20, 2019. Please respond to this email as confirmation of receipt.****

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

Nicole Fisher

Housing Specialist

Texas Department of Housing and Community Affairs

[221 E. 11th Street | Austin, TX 78701](#)

Office: 512.475.2201

Fax: 512.475.1895

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

--
Rebecca Broadbent
Development Assistant - GIS Specialist
Structure Development
512-636-7267

ATTACHMENT B

Affidavit of Primary and Secondary Contact having no record of Deficiency Receipt

STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT

I, Sarah Andre am the Applicant Contact for the Texas Department of Housing and Community Affairs Housing Tax Credit Application number 19126 Division Lofts.

I hereby swear that I did not receive the Texas Department of Housing and Community Affairs deficiency electronic mail message for Tax Credit Application number 19126 Division Lofts on May 13, 2019. Furthermore, I have performed an exhaustive search of all my electronic mail folders and there is no record of a deficiency notice for Tax Credit Application number 19126 Division Lofts on May 13, 2019.

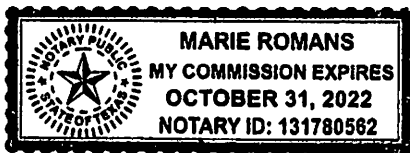
[Signature] 6-4-19
(Applicant Contact) (Date)

State of Texas

County of TRAVIS

Subscribed to and sworn to (or affirmed) before me this 4th day of June 2019.

By (print signers name) Sarah Andre



[Signature]
Print Name: Marie Romans
Notary Public for the State of Texas
Residing in Travis County
My Commission Expires 10/31/22

STATE OF TEXAS

COUNTY OF Williamson

AFFIDAVIT

I Rebecca K. Broadbent am the Second Contact for the Texas Department of Housing and Community Affairs Housing Tax Credit Application number 19126 Division Lofts.

I hereby swear that I did not receive the Texas Department of Housing and Community Affairs deficiency electronic mail message for Tax Credit Application number 19126 Division Lofts on May 13, 2019. Furthermore, I have performed an exhaustive search of all my electronic mail folders and there is no record of a deficiency notice for Tax Credit Application number 19126 Division Lofts on May 13, 2019.

Rebecca K Broadbent 6/3/2019
(Second Contact) (Date)

State of Texas

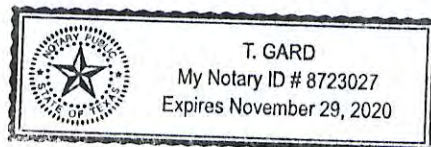
County of Williamson

Subscribed to and sworn to (or affirmed) before me this 3 day of June 2019.

By (print signers name) Rebecca K. Broadbent

T. Gard
Print Name: T. Gard

Notary Public for the State of Texas
Residing in Williamson County
My Commission Expires 11/29/2020



ATTACHMENT C
Analysis of Items in Notice From TDHCA.

1. *Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.*

Both legal descriptions referred to the same 7.35 acres and we pointed that out to staff.

2. *Tab 39. Previous Participation: Please submit a form for each entity on the org charts.*

The two entities in question were listed in Tab 38 as entities that are not yet formed, therefore there could be no possible previous participation.

3. *Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes*

The application provided more Hearing Visual units than are required, there was no need to change the form which calculates the number required.

4. *Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn't match the site plan.*

The form clearly states that only amenities that have parking specifically for the amenity must be listed, we have never listed trash or playgrounds on this form and have never received a deficiency notice for that item. We pointed out where our plans were, which were clearly marked in the application.

ATTACHMENT D
Internal Deficiency Tracking Log

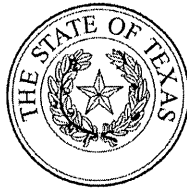
Deficiency Tracking Log 06-05-19

No.	Application (TDHCA #/Name)	Item	TDHCA Reviewer Name	Number	Date Issued	Internal Deadline (2 days early)	TDHCA Deadline Date	Submitted to TDHCA	Confirmation received from TDHCA
1	19109 Verdin Square	Deficiency	Ben Sheppard	1	05/30/19	06/04/19	06/06/19	06/04/19	06/04/19
2	19136 Luna Flats	Deficiency	Liz Cline/Ben Sheppard	3	05/29/19	06/03/19	06/05/19	06/03/19	06/03/19
3	19094 Laurel Vista	Deficiency	Shannon Roth	3	05/29/19	05/31/19	06/04/19	05/30/19	05/31/19
4	19094 and 19095	Deficiency	Jo En Taylor	2	05/24/19	05/29/19	05/31/19	05/31/19	05/31/19
5	19133 Alazan Lofts	Deficiency	Liz Cline	2	05/20/19	05/23/19	05/28/19	05/24/19	05/24/19
6	19227 Reserve at Risinger	Deficiency	Ben Sheppard	2	05/16/19	05/21/19	05/23/19	05/17/19	05/17/19
7	19126 Division Lofts	Deficiency	Spencer Duran	1	05/15/19	05/20/19	05/22/19	05/21/19	05/23/19
8	19126 Division Lofts	Deficiency	Nicole Fisher	2	05/13/19	na, never recvd	05/20/19	05/22/19	05/30/19
9	19136 Luna Flats	Deficiency	Ben Sheppard	2	05/13/19	05/17/19	05/28/19	05/20/19	05/21/19
10	19136 Luna Flats	Deficiency	Patrick Russell	1	05/06/19	05/09/19	05/13/19	05/07/19	05/07/19
11	19143 Reserve at New York	Deficiency	Shannon Roth	2	05/06/19	05/09/19	05/13/19	05/06/19	05/06/19
12	19133 Alazan Lofts	Deficiency	Ben Sheppard	1	05/02/19	05/07/19	05/16/19	05/13/19	05/13/19
13	19227 Reserve at Risinger	Deficiency	Shannon Roth	1	04/30/19	05/03/19	05/14/19	05/09/19	05/13/19
14	19143 Reserve at New York	Deficiency	Liz Cline	1	04/25/19	04/30/19	05/02/19	04/30/19	04/30/19
15	19088 Metro Tower Lofts	Deficiency	Spencer Duran	5	04/23/19	04/28/19	04/30/19	04/30/19	04/30/19
16	19088 Metro Tower Lofts	Deficiency	Sharon Gamble	4	04/19/19	04/24/19	04/26/19	04/23/19	04/23/19
17	19125 Alice Lofts	Deficiency	Sharon Gamble	2	04/15/19	04/18/19	04/22/19	04/16/19	04/16/19
18	19088 Metro Tower Lofts	Deficiency	Ben Sheppard	3	04/10/19	04/16/19	04/18/19	04/16/19	04/17/19
19	19088 Metro Tower Lofts	Deficiency	Spencer Duran	2	04/02/19	04/05/19	04/09/19	04/08/19	04/09/19
20	19088 Metro Tower Lofts	Deficiency	Spencer Duran	2	04/02/19	04/05/19	04/09/19	04/02/19	04/05/19
21	19088 Metro Tower Lofts	Deficiency	Spencer Duran	1	03/26/19	03/29/19	04/02/19	03/27/19	03/27/19
22	19125 Alice Lofts	Deficiency	Elizabeth Henderson	1	03/13/19	03/18/19	03/20/19	03/18/19	03/19/19
23	19094 Laurel Vista	Deficiency	Elizabeth Henderson	1	03/13/19	03/18/19	03/20/19	03/14/19	03/14/19
24	18036 Clyde Ranch	Deficiency	Cris Simpkins	2	10/09/18	10/12/18	10/16/18	10/09/18	10/09/18
25	18036 Clyde Ranch	Deficiency	Ben Sheppard	1	10/03/18	10/08/18	10/10/18	10/10/18	10/11/18
26	18052 Nacogdoches Lofts	Deficiency	Ben Sheppard	2	07/31/18	08/04/18	08/07/18	08/03/18	08/07/18
27	18052 Nacogdoches Lofts	Deficiency	Elizabeth Henderson	1	07/19/18	07/24/18	07/26/18	07/26/18	07/27/18
28	18020 St. Elizabeth Place	Deficiency	Sharon Gamble	4	06/14/18	06/19/18	06/21/18	06/21/18	06/22/18
29	18036 Clyde Ranch	Deficiency	Nicole Fischer	4	06/11/18	06/14/18	06/18/18	06/12/18	06/18/18
30	18036 Clyde Ranch	Deficiency	Andrew Sinnott	3	06/08/18	06/13/18	06/15/18	06/08/18	06/11/18
31	18015 Cambrian East Riverside	Deficiency	Nicole Fischer	3	06/06/18	06/11/18	06/13/18	06/13/18	06/13/18
32	18036 Clyde Ranch	Deficiency	Ben Sheppard	2	05/29/18	05/31/18	06/04/18	05/30/18	05/31/18
33	18036 Clyde Ranch	Deficiency	Elizabeth Henderson	1	05/22/18	05/24/18	05/29/18	05/22/18	05/23/18
34	18040 Slaton Farmhouse Row	Deficiency	Liz Cline	2	05/16/18	05/21/18	05/23/18	05/17/18	05/17/18
35	18054 Piedmont Lofts	Deficiency	Sharon Gamble	1	05/15/18	05/18/18	05/22/18	05/22/18	05/22/18

Deficiency Tracking Log 06-05-19

No.	Application (TDHCA #/Name)	Item	TDHCA Reviewer Name	Number	Date Issued	Internal Deadline (2 days early)	TDHCA Deadline Date	Submitted to TDHCA	Confirmation received from TDHCA
36	18057 Granbury Manor	Deficiency	Sharon Gamble	5	05/11/18	05/16/18	05/18/18	05/15/18	05/16/18
37	18040 Slaton Farmhouse Row	Deficiency	Nicole Fisher	1	05/08/18	05/11/18	05/15/18	05/10/18	05/14/18
38	18057 Granbury Manor	Deficiency	Nicole Fisher	4	05/03/18	05/08/18	05/10/18	05/04/18	05/11/18
39	18057 Granbury Manor	Deficiency	Spencer Duran	3	05/02/18	05/07/18	05/09/18	05/07/18	05/07/18
40	18020 St. Elizabeth Place	Deficiency	Sharon Gamble	2	04/27/18	05/02/18	05/04/18	05/03/18	05/05/18
41	18018 Columbia Renaissance Senior	Deficiency	Liz Cline	1	04/25/18	04/30/18	05/02/18	05/01/18	05/02/18
42	18057 Granbury Manor	Deficiency	Ben Sheppard	2	04/23/18	04/26/18	04/30/18	04/23/18	04/24/18
43	18057 Granbury Manor	Deficiency	Ben Sheppard	1	04/23/18	04/26/18	04/30/18	04/30/18	04/30/18
44	18038 3rd Street Lofts	Deficiency	Spencer Duran	2	04/20/18	04/25/18	04/27/18	04/20/18	04/20/18
45	18053 Alazan Lofts	Deficiency	Elizabeth Henderson	1	04/09/18	04/13/18	04/16/18	04/13/18	04/16/18
46	18038 3rd Street Lofts	Deficiency	Liz Cline	1	03/26/18	03/29/18	04/03/18	03/26/18	03/27/18
47	18015 Cambrian East Riverside	Deficiency	Shannon Roth	1	03/23/18	03/28/18	04/02/18	03/23/18	03/23/18
48	18020 St. Elizabeth Place	Deficiency	Ben Sheppard	1	03/23/18	03/28/18	04/02/18	03/27/18	03/28/18
49	17008 East Meadows	Deficiency	Ben Sheppard	4	06/21/17	06/26/17	06/28/17	06/21/17	06/21/17
50	17024 Dove Ranch	Deficiency	Sharon Gamble	1	06/19/17	06/22/17	06/26/17	06/26/17	06/27/17
51	17007 Magnolia Station	Deficiency	Ben Sheppard	2	06/15/17	06/20/17	06/29/17 [1]	06/22/17	06/23/17
52	17008 East Meadows	Deficiency	Ben Sheppard	3	06/13/17	06/16/17	06/20/17	06/20/17	06/20/17
53	17010 Baxter Lofts	Deficiency	Spencer Duran	3	06/08/17	06/13/17	06/15/17	06/12/17	06/12/17
54	17008 East Meadows Phase II	Deficiency	Nicole Fisher	2	05/31/17	06/05/17	06/07/17	06/06/17	06/06/17
55	17013 Rio Lofts	Deficiency	Ben Sheppard	4	05/26/17	06/01/17	06/05/17	06/02/17	06/02/17
56	17013 Rio Lofts	Deficiency	Ben Sheppard	3	05/22/17	05/24/17	05/30/17	05/24/17	05/24/17
57	17013 Rio Lofts	Deficiency	Shannon Roth	2	05/17/17	05/19/17	05/24/17	05/17/17	05/18/17
58	17013 Rio Lofts	Deficiency	Shannon Roth	1	05/15/17	05/18/17	05/22/17	05/16/17	05/17/17
59	17010 Baxter Lofts	Deficiency	Elizabeth Henderson	2	05/12/17	05/17/17	05/19/17	05/12/17	05/15/17
60	17009 El Jardin	Deficiency	Shannon Roth	1	05/08/17	05/11/17	05/15/17	05/10/17	05/11/17
61	17010 Baxter Lofts	Deficiency	Elizabeth Henderson	1	05/08/17	05/11/17	05/15/17	05/10/17	05/11/17
62	17021 Granbury Manor	Deficiency	Shannon Roth	1	05/02/17	05/05/17	05/09/17	05/05/17	05/09/17
63	17012 Secretariat Apartments	Deficiency	Ben Sheppard	3	05/01/17	05/04/17	05/08/17	05/02/17	05/02/17
64	17008 East Meadows Phase II	Deficiency	Nicole Fisher	1	04/26/17	05/01/17	05/03/17	05/03/17	05/03/17
65	17004 Old Dowlen Cottages	Deficiency	Liz Cline	2	04/18/17	04/21/17	04/25/17	04/18/17	04/18/17
66	17012 Secretariat Apartments	Deficiency	Elizabeth Henderson	2	04/13/17	04/26/17	04/28/17	04/26/17	04/27/17
67	17004 Old Dowlen Cottages	Deficiency	Ben Sheppard	1	04/12/17	04/17/17	04/19/17	04/13/17	04/17/17
68	17012 Secretariat Apartments	Deficiency	Elizabeth Henderson	1	03/29/17	04/03/17	04/05/17	04/04/17	04/04/17
69	17012 Secretariat Apartments	Deficiency	Elizabeth Henderson	Addendum to 1	03/29/17	04/03/17	04/05/17	04/05/17	04/05/17

TDHCA Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*
Leslie Bingham-Escareño, *Vice Chair*
Paul A. Braden, *Member*
Asusena Reséndiz, *Member*
Sharon Thomason, *Member*
Leo Vasquez, *Member*

June 14, 2019

Writer's direct dial: 512.475.3875
Email: david.cervantes@tdhca.state.tx.us

Sarah H. Andre
East 43rd Street, LLC
dba Structure Development
1301 Chicon, Ste. 101
Austin, Texas 78702

RE: APPEAL OF SCORING NOTICE - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION #19126; 3104
DIVISION LOFTS, ARLINGTON

Dear Ms. Andre:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your appeal, dated June 5, 2019, regarding the application submission indicated above. Because a deficiency notice was not cleared to the Department's satisfaction until the sixth business day following the date of the deficiency notice, ten (10) points were deducted from the selection criteria score, subject to your ability to appeal.

Staff issued a deficiency notice via email to the first and second contacts of the Applicant on May 13, 2019, and the response was due to the Department by 5:00 p.m. on May 20, 2019. On May 22, 2019, after not receiving a response from the Applicant, staff contacted the Applicant regarding the notice. In the appeal, the Applicant states that the May 22nd correspondence was the first they received of the notice because the May 13th email was not received by them. Department staff verified through our Information Services Division that "the message left our servers and we either received a notification of successful delivery or (more likely) simply did not receive any notification of a bounce back or error message from their mail server." The evidence submitted with the appeal is a spreadsheet that is manually updated following receipt of a deficiency, and affidavits stating that both the first and second individuals who were sent the deficiency email on May 13th did not receive the email on May 13th, and could not find a record of the email in any of their individual electronic folders. However, based on the deficiency tracking log you submitted with your response, deficiency e-mail notices were successfully received by your office regularly before and after this notice was sent. And though I do not question the veracity of the affidavits submitted, there is no technical evidence submitted to determine that this



notice was not actually received by your e-mail server. As to the issue of whether the administrative deficiency should have been issued at all, staff is clearly within the rules to request clarification of matters expressed in the application, to issue administrative deficiencies, and expect a timely response.

I do not find that the issues raised in your appeal regarding whether 10 penalty points should have been deducted from the Application clearly demonstrate that the penalty should not have been applied, and accordingly I must deny the appeal. If you are not satisfied with this decision, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instruction on the appeals process. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cervantes", with a stylized flourish extending to the right.

David Cervantes

Acting Director

Board Appeal Documents



600 Congress, Suite 2200
Austin, TX 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

June 20, 2019

VIA E-MAIL TRANSMISSION

Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711-3941

Re: Appeal for Scoring
TDHCA No. 19126 – Division Lofts

Ladies and Gentlemen:

The appeal presented by this Applicant presents a question that is difficult for this Board to adjudicate. Department staff confirms that an email notification for an Administrative Deficiency was sent, but an IT professional who has performed an examination on behalf of the Applicant confirms that the email was not received. To avoid penalizing the Applicant for something entirely out of its control, we suggest you consider extending the deadline for response on the Administrative Deficiency to May 22, 2019, the date upon which Department staff followed up with the Applicant, and the Applicant provided a same-day response. This would avoid the scoring penalty and acknowledge that the Applicant responded in promptly, as soon as it was aware of the Administrative Deficiency.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Cynthia L. Bast".

Cynthia L. Bast



June 20, 2019

Chair Goodwin and Board Members
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: TDHCA #19126 Division Lofts, Arlington

Dear Chair Goodwin and Board Members,

I am writing to provide technical evidence for review as noted by David Cervantes on June 14, 2019. Please see the attached documentation from Christian Rodriguez that confirms our assertion that we did not receive the email sent by Nicole Fisher on May 13, 2019. For reference, I have attached the appeal sent to the Department June 5, 2019.

To summarize, our appeal asserts the following:

- Neither myself nor my employee, Rebecca Broadbent, received the original deficiency notice. We couldn't respond to an Administrative Deficiency that we didn't receive.
- The first time we learned of the deficiency was from Nicole Fisher on May 22, 2019, 2 days after the deadline and less than 5 hours before the application would be terminated due to a lack of response. We responded swiftly to the 4 minor items and submitted our response to TDHCA 3 hours and 7 minutes later. This demonstrates that there were no deficiency items we were trying to "tweak" or avoid by not responding.
- I have been completing tax credit applications for the past 13 years and cannot cite one instance in which I did not respond in a timely manner to a 9% deficiency request.
- We track our deficiency items with great care and zealous attention to due dates. We assign them an early due date of 2 days to ensure a timely response that provides time to deliver more information if requested.
- We are actively working on the proposed project and are in the zoning queue with the City of Arlington; this is not a project that is on the back-burner or one that we are disinterested in.
- We would not have sacrificed the approximately \$200,000 spent to date on this Application by ignoring a deficiency.
- We have provided technical evidence that Gmail rejected the email and the email was never successfully delivered and received. That letter is attached.
- The Department bears a portion of responsibility in ensuring its communication is received by the intended recipients. TDHCA explicitly requests a confirmation of receipt in the last line of the deficiency: "**Please respond to this email as confirmation of receipt.**" This reply is reiterated in the subject line of the deficiency "**TIME SENSITIVE – Please reply immediately acknowledging receipt**". We never confirmed receipt because we never received the deficiency, staff did not receive an acknowledgement of receipt and therefore was aware that we did not get the deficiency.
- We respectfully request an extension of the administrative deficiency due date because we were relying on a third party, Google.

Thank you for considering our perspective and understanding that sometimes things "get lost in the mail". We have acted in good faith and request that we not be penalized by the loss of points for something for which we had no ability to control.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Andre', with a long horizontal stroke extending to the right.

Sarah Andre

June 19, 2019

David Cervantes, Acting Director
Texas Department of Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Mr. Cervantes:

Thank you for considering this documentation for Division Lofts, Application 19126. For context, I have worked in IT consulting and emerging technology enablement across the finance, big data, development, and market research industries for fifteen years. Additionally, I have a Bachelor of Science from the Massachusetts Institute of Technology.

In my roles I have evaluated various organizations with an eye for data continuity and security. Due to the increasing complexity and interconnectedness of the systems and infrastructure we all rely on, companies must take unprecedented incremental action to ensure mitigate any potential loss or outage.

For example, just last week Google itself had a massive outage that impacted Google Mail, Google Calendar, and many other services that depend on Google's infrastructure.

I have assessed the situation and can confirm that the email initiated by Nicole Fischer on May 13, 2019 to both Sarah Andre and Rebecca Broadbent at the @structuretexas.com domain was rejected by the mail server, and as such, never successfully delivered and received.

While Structure Texas was already following industry standard practices, given their inability to afford missing any inappropriately rejected emails, I have made additional non-standard recommendations to them to minimize the likelihood of this sort of thing from happening again including: the use of a secure portal managed and controlled by one party, and, in the absence of that option, additional technical workarounds to reduce the strictness with which their mail servers enforce filtering.

Additionally, I highly recommend that the Texas Department of Community Affairs consider following up with its IT department to do a deliverability audit. It should ensure that its DKIM and SPF records are properly configured, and should check metrics for SPAM rating and deliverability. This will help ensure that this deliverability issue doesn't arise with other service providers the TDCA works with as well.

If you have any questions, or are seeking a full independent 3rd party audit for your systems, don't hesitate to reach out. Me and my firm are happy to be of service.

Sincerely,



Christian Rodriguez
CEO

Initial Appeal to TDHCA Executive Director from
June 5, 2019



June 5, 2019

Mr. David Cervantes, Acting Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Application # 19126, Division Lofts, Arlington, Texas

Dear Mr. Cervantes:

I am writing to appeal Staff's decision to deduct 10 points from the above referenced application. In a letter dated May 30, 2019, Staff stated that the applicant failed to reply to a deficiency notice in a timely manner and 5 points were deducted for each day past the customary 5-day deadline that the applicant failed to answer. Under Section 11.902 of the QAP, we may appeal "A determination regarding the Application's satisfaction of applicable requirements" and "Misplacement of an Application or parts of an Application, mathematical errors in scoring an Application, or procedural errors resulting in unequal consideration of the Applicant's proposal."

According to Staff, Nicole Fischer sent a deficiency notice on May 13, 2019 to Sarah Andre and Rebecca Broadbent. The first time either of us saw the deficiency was when Nicole Fischer sent a follow up email May 22, 2019 inquiring about the lack of response. Once we were made aware of Staff's inquiry, we responded within 2.5 hours. Please see Attachment A for a copy of the Deficiency Notice that we received on May 22. Attachment B includes an affidavit by myself and Rebecca Broadbent stating we did not receive the email and have completed an exhaustive search of all our inbox, spam, and trash email without finding the subject email.

First, I would like to point out that none of the items in the notice technically warrant a formal deficiency notice as the information was submitted with the Application. There was no lack of clarity or omission of information in the application. All four questions asked by Staff can be answered from information in the application, as submitted. See Attachment C for an analysis of this.

Second, this is not a case of neglect, avoidance or deceit on our part. We simply did not receive the notice, were therefore not aware of it and accordingly, took no action. As you know, deficiency notices state that the recipient should "acknowledge receipt." All TDHCA deficiencies have a standard endnote that says, "Please respond to this email as confirmation of receipt." Furthermore, the subject line contains the same instruction "Please reply immediately acknowledging receipt." In this case neither I nor Rebecca acknowledged receipt because neither of us received the notice. Generally, it is customary that a Staff person who does not receive an acknowledgement from an Applicant calls that Applicant to make sure they received the notice.

While I understand this is not a requirement of the rules, it is a courtesy that has been extended to numerous Applicants over the years, but one that did not occur in this case. As evidenced by our immediate response to the follow up email regarding the deficiency, we would have responded rapidly upon learning that a notice had been sent out.

Our standard operating procedures for deficiencies are to 1) acknowledge receipt, 2) log the deficiency into a tracking document, 3) assign each item to a team member, 4) convene a team call to discuss the deficiency, 5) compile a response and turn it in 2 days before the firm deadline to allow time for any questions from Staff; 6) log transmittal of that response into the tracking document, and 7) confirm TDHCA receipt and log information into our tracking document. In all cases we acknowledge receipt, and, in many cases, we respond earlier than required and clear the deficiency early. As a show of our good faith efforts to respond when required, a PDF version of our tracking log is provided as Attachment D. This document goes back to the 2017 HTC cycle and has 69 deficiencies related to 27 Housing Tax Credit Applications, all of which were answered timely.

Our office has a long record of acknowledging and responding to deficiency notices. When reflecting upon the past 5 years, we were unable to cite one instance in which we did not respond in a timely manner to a 9% deficiency request. I hope that you will consider this track record as you reflect on this matter.

We believe that this is an item with little to no precedent in the Department's history. Moreover, technical glitches and failures to communicate are not particularly well addressed in the QAP. But they are common occurrences and a very real part of the human condition. I respectfully ask for your understanding in this issue and request that you reconsider the point deduction for this project. We simply cannot respond to an Administrative Deficiency that we do not receive.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah H. Andre', with a long horizontal flourish extending to the right.

Sarah H. Andre
Owner, East 43rd St., LLC dba Structure Development

ATTACHMENT A
Deficiency Notice, Correspondence Regarding Notice



Isabelle Atkinson <isabelle@structuretexas.com>

Fwd: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.

37 messages

Rebecca Broadbent <rebecca@structuretexas.com> Wed, May 22, 2019 at 12:35 PM
To: Sallie Burchett <sallie@structuretexas.com>, Isabelle Atkinson <isabelle@structuretexas.com>

Just received this email from Nicole Fisher. This is the first I have seen this deficiency, and I suspect that Sarah has not seen it either. It is not on our deficiency log. It looks like this needs to be addressed today. I'll start looking at it now.

----- Forwarded message -----

From: **Nicole Fisher** <nicole.fisher@tdhca.state.tx.us>
Date: Wed, May 22, 2019 at 12:11 PM
Subject: RE: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
To: Sarah Andre <sarah@structuretexas.com>, Rebecca Broadbent <rebecca@structuretexas.com>
Cc: Sharon Gamble <sharon.gamble@tdhca.state.tx.us>

Sarah,

Did you respond to this deficiency notice? I am not seeing a response on my end.

Today is the 7th business day and has already at a point loss of 10. If we do not receive a response by 5pm today, the application will be terminated.

Thanks,

Nicole Fisher

Housing Specialist
Texas Department of Housing and Community Affairs
Office: 512.475.2201

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

From: Nicole Fisher
Sent: Monday, May 13, 2019 4:06 PM
To: 'Sarah Andre' <sarah@structuretexas.com>; 'Rebecca Broadbent' <rebecca@structuretexas.com>
Subject: 19126 - 9% HTC Application Deficiency Notice - TIME SENSITIVE - Please reply immediately acknowledging receipt.
Importance: High

In the course of the Department's Housing Tax Credit **Eligibility/Selection/Threshold** and/or Direct Loan review of the above referenced application, a possible Administrative Deficiency as defined in §11.1(d)(2) and described in §11.201(7), §11.201(7)(A) and §11.201(7)(B) of the 2019 Uniform Multifamily Rules was identified. By this notice, the Department is requesting documentation to correct the following deficiency or deficiencies. Any issue initially identified as an Administrative Deficiency may ultimately be determined to be beyond the scope of an Administrative Deficiency, and the distinction between material and non-material missing information is reserved for the Director of Multifamily Finance, Executive Director, and Board.

1. Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.
2. Tab 39. Previous Participation: Please submit a form for each entity on the org charts.
3. Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes.

4. Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn't match the site plan.

The above list may not include all Administrative Deficiencies such as those that may be identified upon a supervisory review of the application. Notice of additional Administrative Deficiencies may appear in a separate notification.

All deficiencies must be corrected or otherwise resolved by 5 pm Austin local time on the fifth business day following the date of this deficiency notice. Deficiencies resolved after 5 pm Austin local time on the fifth business day will have 5 points deducted from the final score. For each additional day beyond the fifth day that any deficiency remains unresolved, the application will be treated in accordance with §11.201(7)(B) of the 2019 Uniform Multifamily Rules. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day may be terminated.

All deficiencies related to the Direct Loan portion of the Application must be resolved to the satisfaction of the Department by 5pm Austin local time on the fifth business day following the date of this deficiency notice. Applications with unresolved deficiencies after 5pm Austin local time on the seventh business day will be suspended from further processing, and the Applicant will be notified to that effect, until the deficiencies are resolved. If, during the period of time when the Application is suspended from review, Direct Loan funds become oversubscribed, the Applicant will be informed that unless the outstanding item(s) are resolved within one business day the Application will be terminated. For purposes of priority under the Direct Loan set-asides, if the outstanding item(s) are resolved within one business day, the date by which the item is submitted shall be the new received date pursuant to §13.5(c) of the 2019 Multifamily Direct Loan Rule. Applicants should be prepared for additional time needed for completion of staff reviews.

Unless the person that issued this deficiency notice, named below, specifies otherwise, submit all documentation at the same time and in only one file using the Department's Serv-U HTTPs System. Once the documents are submitted to the Serv-U HTTPs system, please email the staff member issuing this notice. If you have questions regarding the Serv-U HTTPs submission process, contact Liz Cline at liz.cline@tdhca.state.tx.us or by phone at (512)475-3227. You may also contact Jason Burr at jason.burr@tdhca.state.tx.us or by phone at (512)475-3986.

All applicants should review §§11.1(b) and 11.1(h) of the 2019 QAP and Uniform Multifamily Rules as they apply to due diligence, applicant responsibility, and the competitive nature of the program for which they are applying.

****All deficiencies must be corrected or clarified by 5 pm Austin local time on Monday, May 20, 2019. Please respond to this email as confirmation of receipt.****

About TDHCA

The Texas Department of Housing and Community Affairs administers a number of state and federal programs through for-profit, nonprofit, and local government partnerships to strengthen communities through affordable housing development, home ownership opportunities, weatherization, and community-based services for Texans in need. For more information, including current funding opportunities and information on local providers, please visit www.tdhca.state.tx.us.

Nicole Fisher

Housing Specialist

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.2201

Fax: 512.475.1895

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC Section 11.1(b) there are important limitations and caveats (Also see 10 TAC §10.2(b)).

--
Rebecca Broadbent
Development Assistant - GIS Specialist
Structure Development
512-636-7267

ATTACHMENT B

Affidavit of Primary and Secondary Contact having no record of Deficiency Receipt

STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT

I, Sarah Andre am the Applicant Contact for the Texas Department of Housing and Community Affairs Housing Tax Credit Application number 19126 Division Lofts.

I hereby swear that I did not receive the Texas Department of Housing and Community Affairs deficiency electronic mail message for Tax Credit Application number 19126 Division Lofts on May 13, 2019. Furthermore, I have performed an exhaustive search of all my electronic mail folders and there is no record of a deficiency notice for Tax Credit Application number 19126 Division Lofts on May 13, 2019.

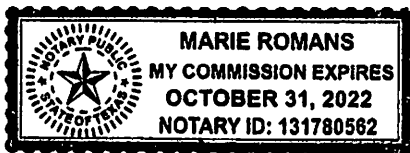
[Signature] 6-4-19
(Applicant Contact) (Date)

State of Texas

County of TRAVIS

Subscribed to and sworn to (or affirmed) before me this 4th day of June 2019.

By (print signers name) Sarah Andre



[Signature]
Print Name: Marie Romans
Notary Public for the State of Texas
Residing in Travis County
My Commission Expires 10/31/22

STATE OF TEXAS

COUNTY OF Williamson

AFFIDAVIT

I Rebecca K. Broadbent am the Second Contact for the Texas Department of Housing and Community Affairs Housing Tax Credit Application number 19126 Division Lofts.

I hereby swear that I did not receive the Texas Department of Housing and Community Affairs deficiency electronic mail message for Tax Credit Application number 19126 Division Lofts on May 13, 2019. Furthermore, I have performed an exhaustive search of all my electronic mail folders and there is no record of a deficiency notice for Tax Credit Application number 19126 Division Lofts on May 13, 2019.

Rebecca K Broadbent 6/3/2019
(Second Contact) (Date)

State of Texas

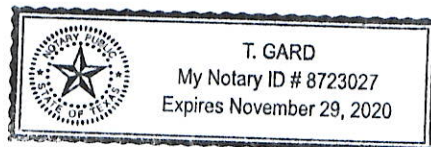
County of Williamson

Subscribed to and sworn to (or affirmed) before me this 3 day of June 2019.

By (print signers name) Rebecca K. Broadbent

T. Gard
Print Name: T. Gard

Notary Public for the State of Texas
Residing in Williamson County
My Commission Expires 11/29/2020



ATTACHMENT C
Analysis of Items in Notice From TDHCA.

1. *Tab 12. Title Commitment: The Legal description in the Title Commitment does not appear to match the legal description in the Contract or Exhibit A.*

Both legal descriptions referred to the same 7.35 acres and we pointed that out to staff.

2. *Tab 39. Previous Participation: Please submit a form for each entity on the org charts.*

The two entities in question were listed in Tab 38 as entities that are not yet formed, therefore there could be no possible previous participation.

3. *Tab 23b. Accessible Hearing/Visual Units: The Site Plan and building plans indicate more Hearing Visual Units than the Calculation form. Please make appropriate changes*

The application provided more Hearing Visual units than are required, there was no need to change the form which calculates the number required.

4. *Tab 23c. Accessible Parking Calculation: The number of amenities listed does not match the site plan. Also, the number carports that must be APSs doesn't match the site plan.*

The form clearly states that only amenities that have parking specifically for the amenity must be listed, we have never listed trash or playgrounds on this form and have never received a deficiency notice for that item. We pointed out where our plans were, which were clearly marked in the application.

ATTACHMENT D
Internal Deficiency Tracking Log

Deficiency Tracking Log 06-05-19

No.	Application (TDHCA #/Name)	Item	TDHCA Reviewer Name	Number	Date Issued	Internal Deadline (2 days early)	TDHCA Deadline Date	Submitted to TDHCA	Confirmation received from TDHCA
1	19109 Verdin Square	Deficiency	Ben Sheppard	1	05/30/19	06/04/19	06/06/19	06/04/19	06/04/19
2	19136 Luna Flats	Deficiency	Liz Cline/Ben Sheppard	3	05/29/19	06/03/19	06/05/19	06/03/19	06/03/19
3	19094 Laurel Vista	Deficiency	Shannon Roth	3	05/29/19	05/31/19	06/04/19	05/30/19	05/31/19
4	19094 and 19095	Deficiency	Jo En Taylor	2	05/24/19	05/29/19	05/31/19	05/31/19	05/31/19
5	19133 Alazan Lofts	Deficiency	Liz Cline	2	05/20/19	05/23/19	05/28/19	05/24/19	05/24/19
6	19227 Reserve at Risinger	Deficiency	Ben Sheppard	2	05/16/19	05/21/19	05/23/19	05/17/19	05/17/19
7	19126 Division Lofts	Deficiency	Spencer Duran	1	05/15/19	05/20/19	05/22/19	05/21/19	05/23/19
8	19126 Division Lofts	Deficiency	Nicole Fisher	2	05/13/19	na, never recvd	05/20/19	05/22/19	05/30/19
9	19136 Luna Flats	Deficiency	Ben Sheppard	2	05/13/19	05/17/19	05/28/19	05/20/19	05/21/19
10	19136 Luna Flats	Deficiency	Patrick Russell	1	05/06/19	05/09/19	05/13/19	05/07/19	05/07/19
11	19143 Reserve at New York	Deficiency	Shannon Roth	2	05/06/19	05/09/19	05/13/19	05/06/19	05/06/19
12	19133 Alazan Lofts	Deficiency	Ben Sheppard	1	05/02/19	05/07/19	05/16/19	05/13/19	05/13/19
13	19227 Reserve at Risinger	Deficiency	Shannon Roth	1	04/30/19	05/03/19	05/14/19	05/09/19	05/13/19
14	19143 Reserve at New York	Deficiency	Liz Cline	1	04/25/19	04/30/19	05/02/19	04/30/19	04/30/19
15	19088 Metro Tower Lofts	Deficiency	Spencer Duran	5	04/23/19	04/28/19	04/30/19	04/30/19	04/30/19
16	19088 Metro Tower Lofts	Deficiency	Sharon Gamble	4	04/19/19	04/24/19	04/26/19	04/23/19	04/23/19
17	19125 Alice Lofts	Deficiency	Sharon Gamble	2	04/15/19	04/18/19	04/22/19	04/16/19	04/16/19
18	19088 Metro Tower Lofts	Deficiency	Ben Shephard	3	04/10/19	04/16/19	04/18/19	04/16/19	04/17/19
19	19088 Metro Tower Lofts	Deficiency	Spencer Duran	2	04/02/19	04/05/19	04/09/19	04/08/19	04/09/19
20	19088 Metro Tower Lofts	Deficiency	Spencer Duran	2	04/02/19	04/05/19	04/09/19	04/02/19	04/05/19
21	19088 Metro Tower Lofts	Deficiency	Spencer Duran	1	03/26/19	03/29/19	04/02/19	03/27/19	03/27/19
22	19125 Alice Lofts	Deficiency	Elizabeth Henderson	1	03/13/19	03/18/19	03/20/19	03/18/19	03/19/19
23	19094 Laurel Vista	Deficiency	Elizabeth Henderson	1	03/13/19	03/18/19	03/20/19	03/14/19	03/14/19
24	18036 Clyde Ranch	Deficiency	Cris Simpkins	2	10/09/18	10/12/18	10/16/18	10/09/18	10/09/18
25	18036 Clyde Ranch	Deficiency	Ben Sheppard	1	10/03/18	10/08/18	10/10/18	10/10/18	10/11/18
26	18052 Nacogdoches Lofts	Deficiency	Ben Sheppard	2	07/31/18	08/04/18	08/07/18	08/03/18	08/07/18
27	18052 Nacogdoches Lofts	Deficiency	Elizabeth Henderson	1	07/19/18	07/24/18	07/26/18	07/26/18	07/27/18
28	18020 St. Elizabeth Place	Deficiency	Sharon Gamble	4	06/14/18	06/19/18	06/21/18	06/21/18	06/22/18
29	18036 Clyde Ranch	Deficiency	Nicole Fischer	4	06/11/18	06/14/18	06/18/18	06/12/18	06/18/18
30	18036 Clyde Ranch	Deficiency	Andrew Sinnott	3	06/08/18	06/13/18	06/15/18	06/08/18	06/11/18
31	18015 Cambrian East Riverside	Deficiency	Nicole Fischer	3	06/06/18	06/11/18	06/13/18	06/13/18	06/13/18
32	18036 Clyde Ranch	Deficiency	Ben Sheppard	2	05/29/18	05/31/18	06/04/18	05/30/18	05/31/18
33	18036 Clyde Ranch	Deficiency	Elizabeth Henderson	1	05/22/18	05/24/18	05/29/18	05/22/18	05/23/18
34	18040 Slaton Farmhouse Row	Deficiency	Liz Cline	2	05/16/18	05/21/18	05/23/18	05/17/18	05/17/18
35	18054 Piedmont Lofts	Deficiency	Sharon Gamble	1	05/15/18	05/18/18	05/22/18	05/22/18	05/22/18

Deficiency Tracking Log 06-05-19

No.	Application (TDHCA #/Name)	Item	TDHCA Reviewer Name	Number	Date Issued	Internal Deadline (2 days early)	TDHCA Deadline Date	Submitted to TDHCA	Confirmation received from TDHCA
36	18057 Granbury Manor	Deficiency	Sharon Gamble	5	05/11/18	05/16/18	05/18/18	05/15/18	05/16/18
37	18040 Slaton Farmhouse Row	Deficiency	Nicole Fisher	1	05/08/18	05/11/18	05/15/18	05/10/18	05/14/18
38	18057 Granbury Manor	Deficiency	Nicole Fisher	4	05/03/18	05/08/18	05/10/18	05/04/18	05/11/18
39	18057 Granbury Manor	Deficiency	Spencer Duran	3	05/02/18	05/07/18	05/09/18	05/07/18	05/07/18
40	18020 St. Elizabeth Place	Deficiency	Sharon Gamble	2	04/27/18	05/02/18	05/04/18	05/03/18	05/05/18
41	18018 Columbia Renaissance Senior	Deficiency	Liz Cline	1	04/25/18	04/30/18	05/02/18	05/01/18	05/02/18
42	18057 Granbury Manor	Deficiency	Ben Sheppard	2	04/23/18	04/26/18	04/30/18	04/23/18	04/24/18
43	18057 Granbury Manor	Deficiency	Ben Sheppard	1	04/23/18	04/26/18	04/30/18	04/30/18	04/30/18
44	18038 3rd Street Lofts	Deficiency	Spencer Duran	2	04/20/18	04/25/18	04/27/18	04/20/18	04/20/18
45	18053 Alazan Lofts	Deficiency	Elizabeth Henderson	1	04/09/18	04/13/18	04/16/18	04/13/18	04/16/18
46	18038 3rd Street Lofts	Deficiency	Liz Cline	1	03/26/18	03/29/18	04/03/18	03/26/18	03/27/18
47	18015 Cambrian East Riverside	Deficiency	Shannon Roth	1	03/23/18	03/28/18	04/02/18	03/23/18	03/23/18
48	18020 St. Elizabeth Place	Deficiency	Ben Sheppard	1	03/23/18	03/28/18	04/02/18	03/27/18	03/28/18
49	17008 East Meadows	Deficiency	Ben Sheppard	4	06/21/17	06/26/17	06/28/17	06/21/17	06/21/17
50	17024 Dove Ranch	Deficiency	Sharon Gamble	1	06/19/17	06/22/17	06/26/17	06/26/17	06/27/17
51	17007 Magnolia Station	Deficiency	Ben Sheppard	2	06/15/17	06/20/17	06/29/17 [1]	06/22/17	06/23/17
52	17008 East Meadows	Deficiency	Ben Sheppard	3	06/13/17	06/16/17	06/20/17	06/20/17	06/20/17
53	17010 Baxter Lofts	Deficiency	Spencer Duran	3	06/08/17	06/13/17	06/15/17	06/12/17	06/12/17
54	17008 East Meadows Phase II	Deficiency	Nicole Fisher	2	05/31/17	06/05/17	06/07/17	06/06/17	06/06/17
55	17013 Rio Lofts	Deficiency	Ben Sheppard	4	05/26/17	06/01/17	06/05/17	06/02/17	06/02/17
56	17013 Rio Lofts	Deficiency	Ben Sheppard	3	05/22/17	05/24/17	05/30/17	05/24/17	05/24/17
57	17013 Rio Lofts	Deficiency	Shannon Roth	2	05/17/17	05/19/17	05/24/17	05/17/17	05/18/17
58	17013 Rio Lofts	Deficiency	Shannon Roth	1	05/15/17	05/18/17	05/22/17	05/16/17	05/17/17
59	17010 Baxter Lofts	Deficiency	Elizabeth Henderson	2	05/12/17	05/17/17	05/19/17	05/12/17	05/15/17
60	17009 El Jardin	Deficiency	Shannon Roth	1	05/08/17	05/11/17	05/15/17	05/10/17	05/11/17
61	17010 Baxter Lofts	Deficiency	Elizabeth Henderson	1	05/08/17	05/11/17	05/15/17	05/10/17	05/11/17
62	17021 Granbury Manor	Deficiency	Shannon Roth	1	05/02/17	05/05/17	05/09/17	05/05/17	05/09/17
63	17012 Secretariat Apartments	Deficiency	Ben Sheppard	3	05/01/17	05/04/17	05/08/17	05/02/17	05/02/17
64	17008 East Meadows Phase II	Deficiency	Nicole Fisher	1	04/26/17	05/01/17	05/03/17	05/03/17	05/03/17
65	17004 Old Dowlen Cottages	Deficiency	Liz Cline	2	04/18/17	04/21/17	04/25/17	04/18/17	04/18/17
66	17012 Secretariat Apartments	Deficiency	Elizabeth Henderson	2	04/13/17	04/26/17	04/28/17	04/26/17	04/27/17
67	17004 Old Dowlen Cottages	Deficiency	Ben Sheppard	1	04/12/17	04/17/17	04/19/17	04/13/17	04/17/17
68	17012 Secretariat Apartments	Deficiency	Elizabeth Henderson	1	03/29/17	04/03/17	04/05/17	04/04/17	04/04/17
69	17012 Secretariat Apartments	Deficiency	Elizabeth Henderson	Addendum to 1	03/29/17	04/03/17	04/05/17	04/05/17	04/05/17

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on timely filed appeal of HTC Application 19158 Pendleton Square

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) application 19158 Pendleton Square, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, on the posted application log dated April 26, 2019, Application 19158 Pendleton Square is indicated as a “priority” application in subregion 11 Urban;

WHEREAS, on the posted application log dated May 29, 2019, the Application is not listed as a “priority” application;

WHEREAS, the Applicant filed an appeal of the removal of the “priority status”;
and

WHEREAS, the Acting Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal for 19158 Pendleton Square regarding its “priority status” is hereby denied.

BACKGROUND

Pursuant to 10 TAC §11.9(c)(8) of the Qualified Allocation Plan (QAP) related to scoring under Readiness to Proceed:

(C) Non-priority Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were in nonpriority status, if they ultimately receive an award. The period of non-priority status begins on the date the Department publishes a list showing an Application is not in priority status.

So that Applicants can be aware when their Application is or is not in “priority status”, staff added a “Priority” column to the application log. “Priority” designation does not grant any particular status, nor does it necessarily result in an Application being recommended for an allocation of credits. An application can go in and out of “priority status” throughout the review period from

March to July each year, either by actions taken by staff related to that application (for example issuance of scoring notices or handling of an appeal), or by actions taken regarding other Applications on the list, which then shift other applications accordingly. In this case, actions taken by staff regarding other applications in the same subregion as this Application caused the noted Application to be removed from “priority status.” The Application proposes the New Construction of 60 Units for a general population in Harlingen.

Priority designation:

At the head of every application log is the following statement:

“Priority” status means the Application is scheduled for staff review. Applicants scoring under Readiness to Proceed should refer to 10 TAC §11.9(c)(8)(C) regarding priority status.”

This practical definition is generally reflective of staff’s view concerning which applications are believed most likely to be competitive, and therefore should undergo a full programmatic review first. Designation on the application log as “priority” is not an award, nor a requirement of award by statute or rule, and “priority status” is not a statutory requirement of award. It is merely a way to help prioritize the work of the Multifamily and Real Estate Analysis staff. Accordingly, applications designated on an application log as “priority” may not receive an award, and applications not designated as “priority” on a given log may receive an award. The only practical application of the designation of “priority” is in the case of applications that have selected “Readiness to proceed” points under 10 TAC §11.9(c)(8) of the QAP. In §11.9(c)(8)(C), an extension to the November deadline to close all financing and provide an executed construction contract is given for the amount of time an awarded application spent on the application log in “non-priority status.” The Application that is the subject of the appeal has selected readiness to proceed points, so the staff decision regarding removal of priority status on the application log will have consequences to the application if it is eventually awarded; however, in this case, removal of designation provides the Applicant with more time to meet their readiness to proceed deadline, if awarded, and does not present a negative repercussion.

Accordingly, it is unclear whether staff’s removal of “priority” status on the application log from this application constitutes an appealable action under 10 TAC §11.902 of the QAP, but, out of an abundance of caution, staff has accepted the June 5, 2019 letter on its face as an “appeal [of] the removal of the ‘priority’ designation of Project Owner’s application . . .” and has addressed this designation in isolation from the other issues raised in the appeal.

Given that “priority” status, as reflected on the application, is an internal staff designation that is non-determinative of an award, the Acting Executive Director saw no evidence or argument in the appeal that provides a rationale for staff to place the word “priority” back on the application log associated with this Application, and continue evaluation of this application ahead of those that staff currently feels are more likely to receive an award. Accordingly, the appeal was denied. Furthermore, the designation of “priority” for this application, under 10 TAC §11.9(c)(8)(C),

would only serve to decrease the amount of extension available beyond the November deadline in the event the application receives an award.

Timeliness of Two Appeals By Other Applicants in Subregion

As the Applicant appears to acknowledge in the appeal, the Applicant is statutorily precluded from appealing the scoring of another application. Per Tex. Gov't Code Section 2306.6715 related to Appeals:

(b) An applicant may not appeal a decision made under Section 2306.6710 regarding an application filed by another applicant.

Per 10 TAC §11.902 of the QAP:

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

Accordingly, the Acting Director explained the events and rules that governed the decision to accept as timely the appeals referenced by this Applicant, but denied that there existed a right for this Applicant to appeal decisions made regarding an application filed by, or an issue related to, another Applicant.

19158 Pendleton Square Appeal Documents



A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS & COUNSELORS

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(214) 780-1413 (Direct)
(214) 780-1401 (Fax)
msnedden@shackelford.law

June 5, 2019

Via Email: david.cervantes@tdhca.state.tx.us

David Cervantes
Interim Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

In Re: Appeal of Application Log Status for TDHCA #19158 – Pendleton Square, LP

Dear Mr. Cervantes:

This law firm represents Pendleton Square, LP (“Project Owner”), and I have been requested by Justin Zimmerman, Managing Member of the General Partner of Project Owner, to appeal the removal of the “priority” designation of Project Owner’s application (the “Application”) for competitive housing tax credits for its proposed development “Pendleton Square Apartments” to be located in Harlingen, Texas (the “Project”).

Project Owner’s appeal of the application log status is on the basis that two prior appeals submitted by other applicants (detailed below), appeals that were subsequently granted by TDHCA and directly caused removal of Project Owners’ “priority” status, were not submitted timely in accordance with Tex. Gov’t Code §2306.6715(c) (the “Code”) and the 2019 Qualified Allocation Plan (“QAP”). Such filing of the above appeals did not comply with the Code, the requirements of the Code cannot be waived by TDHCA and, therefore, those appeals should have been denied.

FACTS

On April 23, 2019, Project Owner’s Application held a “priority” position in the application log. Neither Avanti at Emerald Point (#19331) nor Nolana Villas (#19273) had a “priority” designation due to both developments being located within 1,000 feet of another application in Region 11 (Urban) and staff’s determination that those applications violated Section 11.3(g) of the QAP.

On May 29, 2019, TDHCA posted a new application log removing the “priority” status of Project Owner’s Application and giving Avanti at Emerald Point and Nolana Villas “priority” status. The reversal in “priority” status was the result of TDHCA granting certain appeals submitted by Avanti at Emerald Point and Nolana Villas, and were based on the argument that the

intervening land in question has an independent economic purpose and therefore does not meet the criteria of Section 11.3(g) of the QAP. Both appeals (in addition to the Executive Director's approval of those appeals) are attached hereto at Exhibit "A".

As noted above, the application log in question was published on TDHCA's website on April 26, 2019. The Code and the QAP require that any appeal related to that application log be filed by May 3, 2019—seven (7) days from the date the log was published on TDHCA's website, not the date the list serv was circulated. The appeal submitted on behalf of Nolana Villas was submitted on May 6, 2019. The appeal submitted on behalf of Avanti at Emerald Point was submitted on May 8, 2019. It is our opinion that granting of both appeals by TDHCA should be rescinded due to failure to comply with the statutory deadlines for such appeals.

LEGAL BASIS – STATUTORY COMPLIANCE

Please see below excerpt from Tex. Gov't Code §2306.6715(c) that makes it clear an appeal should be submitted no later than the seventh day after the date TDHCA publishes the application log:

Tex. Gov't Code §2306.6715(c):

An applicant must file a written appeal authorized by this section with the department not later than the seventh day after the date the department publishes the results of the application evaluation process provided by Section 2306.6710 .

Furthermore, please see below excerpt from Section 11.1(b) of the QAP that directly references the above Code section and goes further to confirm that "publishes" means publication on the Department's website:

QAP:

As provided by Tex. Gov't Code §2306.6715(c) for Competitive HTC Applications, an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that Applicant's score or the seventh day from the date of transmittal of a scoring notice.

Although we are aware an applicant cannot directly appeal a decision made regarding an application filed by another applicant, this is a statutory requirement that cannot be waived by TDHCA. The plain language of the Code and the QAP make it clear that both Avanti at Emerald Point and Nolana Villas were required to file an appeal by May 3, 2019—seven days from the date the log was published on TDHCA's website.

CONCLUSION

Based upon the foregoing, Project Owner respectfully requests that the granting of the appeals in favor of Avanti at Emerald Point and Nolana Villas be rescinded due to failure to comply with the statutory deadlines and that Project Owner's "priority" designation be reinstated. If your decision, however, is to affirm the appeals of Avanti at Emerald Point and Nolana Villas, then

David Cervantes
June 5, 2019
Page 3

Project Owner further hereby respectfully requests this matter be appealed to the Board for consideration at the next Board meeting scheduled on June 27, 2019.

Very truly yours,



Michelle Snedden

Schedule of Exhibits: A

cc: Marni Holloway (via email)
Sharon Gamble (via email)
Justin Zimmerman (via email)
Lora Myrick (via email)
Juli Gonzalez (via email)
Melissa Forster (via email)
John Shackelford, Esq. (of the Firm)

EXHIBIT A

COATS | ROSE

V PROFESSIONAL CORPORATION

BARRY PALMER
DIRECTOR

BPALMER@COATSROSE.COM
DIRECT: (713) 653-7395
FAX: (713) 890-3944

May 6, 2019

Via Email: david.cervantes@tdhca.state.tx.us

David Cervantes, Acting Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: TDHCA Application #19273 - Nolana Villas, McAllen, Texas;
Appeal of Application Log Status

Dear Mr. Cervantes:

Texas Grey Oaks, LLC, through an affiliate (the "Applicant"), filed Application #19273 with the Texas Department of Housing and Community Affairs ("TDHCA") seeking 2019 competitive 9% housing tax credits to finance the development of Nolana Villas, a proposed 124-unit rental housing community to be located on 7.517 acres of land on N K Center St. near E. Nolana Avenue, in McAllen, Hidalgo County, Texas (the "Development Site"). Nolana Villas is intended to serve individuals and families.

On April 22, 2019, TDHCA Staff sent a final scoring notice to the Applicant awarding 160 pts. to the Application recognizing no reduction in points.

The April 26, 2019 application log posted by TDHCA changed the ranking of the applications in Region 11-Urban moving Nolana Villas from first place to last place and out of priority status. Staff's only comment to the Applicant regarding their decision to reorder the applications was a statement on the log indicating that the Development Site was located within 1,000 feet of Application #19064 ("4242 Jackson Apartments"). 4242 Jackson Apartments is proposed to be located in the 4200 block of N. Jackson Rd., east of the Development Site, and is also intended to serve individuals and families.

We assume Staff is applying the 1,000-foot de-prioritization provision of §11.3(g) Proximity of Development Site of the 2019 QAP in making its decision to move the Nolana Villas application to last place in Urban-Region 11.

9 GREENWAY PLAZA, STE 1000, HOUSTON, TEXAS 77046

PHONE: (713) 651-0111 FAX: (713) 651-0220

coatsrose.com

This letter appeals Staff's interpretation of this rule and how it was applied to the Nolana Villas application. Section 11.3(g) of the 2019 QAP establishes rules governing distances between two or more developments serving the same Target Population. The rule was incorporated into the QAP in 2018 and modified in 2019 to include, in part, a 1,000-foot "test" when evaluating the proximity of developments serving the same target population. The rule states that if two or more Competitive Applications serving the same Tenant Population are separated by not more than 1,000 feet, then the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application. However, the rule stipulates that the 1,000 foot test only applies if the intervening property separating the development sites meets one or both of the following elements:

- (i) the intervening property does not have a clear and apparent economic reason, and/or
- (ii) the intervening property was not created for the apparent purpose of creating separation under the rule.

The Applicant submitted only one application, #19273-Nolana Villas, on a site already zoned Multifamily ("MF"). None of the intervening property within 1,000 feet of the Development Site was "created" by the Applicant or any affiliate of the Applicant so there is no element of separation for the purpose of circumventing the rule. All intervening property is separately owned, each of which has a clear and apparent economic reason or purpose given that each property is zoned for various uses that include MF, Commercial and General Business. At some point the intervening parcels will be sold and utilized as intended. Attached please find **Exhibit "A"** - zoning map that was provided by representatives of the Applicant to Staff.

We believe the rule was modified in 2019 to avoid unilateral gaming of the proximity rule by a single developer or developers working in conjunction with each other that elect to submit two or more competitive applications serving the same Target Population by carving out separate development sites from a single parcel and/or creating separation by manipulating parcel spacing/layout with no practical purpose for the separation other than to avoid having two sites that are contiguous.

To apply the 1,000-foot test in the manner suggested by Staff effectively creates a 1,000-foot same-year rule which is contrary to the 2-mile same year rule dictated by State statute and Staff's own position on expanding the application of this rule. Pursuant to §2306.6711(f) of the Tex. Gov't Code, the 2-mile same year rule applies solely to development sites located in counties with a population that exceeds one million in population. Hidalgo County is less than one million in population. Staff has repeatedly rejected any attempt to apply the 2-mile rule or any similar distance requirement to counties with a population that is less than one million in population unless such application is approved by the Texas legislature. Attached please find **Exhibit "B"** - excerpt from the transcript of the Board meeting of September 6, 2018 discussing Staff's position on the 2-mile rule and attempts by the development community to include dispersion efforts into the 2019 QAP.

May 6, 2019

Page 3

We disagree with Staff's interpretation of §11.3(g)-Proximity of Development Site of the 2019 QAP and how this rule was applied to the Nolana Villas Application. The rule requires more than a mere showing of 1,000 feet or less of separation between proposed development sites, and if even only one of the qualifications is present, the requirement to de-prioritize is not applicable. The Nolana Villas Application meets both of the qualifications, and is in clear compliance with the Proximity requirements. We believe that the Nolana Villas Application should be ranked #3 behind Application #19330-Avanti Legacy and 4242 Jackson Apartments. We appreciate your due consideration of this matter and earliest response given that Region 11-Urban is a "readiness to proceed" Region and all awarded transactions must close by the end of November, 2019. Please do not hesitate to contact me if you have any questions or require further information.

Very truly yours,

A handwritten signature in black ink, appearing to read 'B. Palmer', written in a cursive style.

Barry Palmer

Enclosures

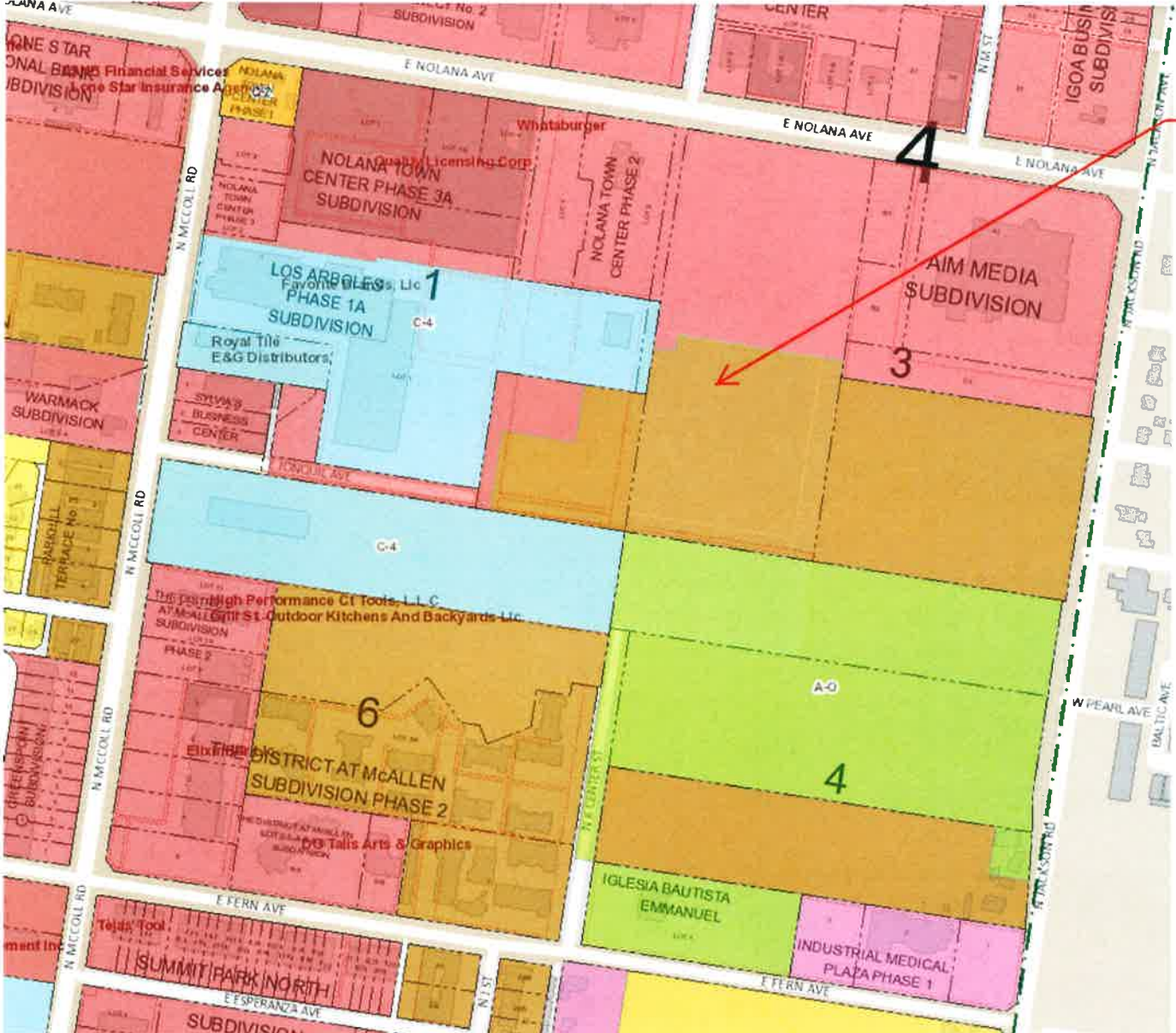
Cc: Marni Holloway – via email (marni.holloway@tdhca.state.tx.us)
Sharon Gamble – via Email (sharon.gamble@tdhca.state.tx.us)
Steve Lollis – via Email (Steve@TexasGreyOaks.com)
Donna Rickenbacker – via Email (donna@marqueconsultants.com)

EXHIBIT A

Zoning Map

(attached)

Exhibit "A"



Nolana Villas Site

- Zoning
- A-O - Agricultural and Open Space
 - C-1 - Office Building
 - C-2 - Neighborhood Commercial
 - C-3 - General Business
 - C-3L - Light Commercial
 - C-4 - Commercial Industrial
 - I-1 - Light Industrial
 - I-2 - Heavy Industrial
 - R-1 - Single Family Residential
 - R-2 - Duplex-Fourplex Residential
 - R-3A - Apartments
 - R-3C - Condominiums
 - R-3T - Townhouses
 - R-4 - Mobile Home

EXHIBIT B

Board Transcript Excerpt

(attached)

1 administrative deficiency, language has been added to the
2 RFAD section regarding requests that are questioning
3 staff's decision regarding an item rather than presenting
4 new information. If an RFAD is submitted that's really
5 questioning what we have done as staff, we are going to
6 disregard that RFAD.

7 And that would be it for QAP items.

8 MR. GOODWIN: Did you have another comment,
9 sir?

10 MR. KROCHTENGEL: Yes, sir. Once again, Zach
11 Krochtengel.

12 Yesterday at the meeting and in previous
13 roundtables I proposed to add a scoring item and the
14 reason I proposed to add a scoring item is because in the
15 past three years there has continued to be a problem with
16 projects being awarded in the same census tract. There's
17 the two-mile same year rule that applies to counties with
18 population over a million and the irony is that works for
19 those counties that probably could support two projects
20 within two miles of each other, but for other subregions
21 that do not have the two-mile same year rule, there
22 continues to be projects that are awarded in the same
23 census tract.

24 In 2016 there were three projects in the same
25 census tract in Urban 11, two projects in the same census

1 tract in Rural 4, two projects in the same census tract in
2 Urban 6, and two projects in the same census tract in
3 Urban 7. Those are all projects that happened in the same
4 census tract because the two-mile same year rule did not
5 apply. In 2017 there were two in the same census tract in
6 Urban 11, two in the same census tract in Urban 6 and two
7 in the same census tract in Rural 4. And then in 2018
8 there were two in the same census tract in Urban 11 twice
9 and then there were three in the same census tract in
10 Urban 6. This has occurred in Whitehouse, Missouri City,
11 Georgetown, Lindale, Olmito, Midway, Stafford, and various
12 other places in Fort Bend County.

13 Now, the reason I bring this up is because
14 without the two-mile same year rule, with all the
15 tiebreakers, they just go down to the last tiebreaker and
16 it ends up being project A in the same census tract,
17 project B is second place, so the tiebreaker doesn't solve
18 this issue.

19 The proposal that I've made would award one
20 point to a project in each census tract that is closest to
21 an impactful amenity, and when I say that I mean a grocery
22 store, a library, I'm not proposing a specific amenity,
23 just whichever one is closest to that amenity that staff
24 would choose would automatically receive one point and
25 would elevate that one point above the other projects in

1 that census tract. So if you were alone in a census
2 tract, you would automatically get that extra point and
3 score the maximum, but if you were in the same census
4 tract as two or three other projects, those two or three
5 other projects would be a point behind.

6 And I think the effect of that would be the
7 first project would be awarded and then it would go to the
8 next best scoring census tract and one project in that
9 census tract would be awarded, and it would really create
10 dispersion of housing that right now for the past three
11 years we're not seeing, and I just think it's a problem
12 when three projects in the same census tract are all being
13 awarded because this statutory limitation of the two-mile
14 same year rule only applies to counties over one million.

15 Thank you.

16 MR. GOODWIN: Any questions?

17 MS. RESÉNDIZ: Mr. Chairman.

18 Will you restate your name for me? I
19 apologize.

20 MR. KROCHTENGEL: Zachary Krochtengel.

21 MS. RESÉNDIZ: Zachary, thank you for the
22 information.

23 And will someone from staff address the two-
24 mile same year rule?

25 MR. IRVINE: It's a statutory provision that

1 only applies in certain very large counties.

2 MS. RESÉNDIZ: Okay.

3 MR. GOODWIN: Any other questions?

4 MS. RESÉNDIZ: Thank you.

5 MR. GOODWIN: Thank you.

6 MR. IRVINE: If I might interject just to throw
7 a little more chaos into the meeting. We did work with
8 various concepts that would have addressed this idea. I
9 understand Zach's idea about proximity to an impactful
10 amenity. The actual approach that we took was a little
11 bit different, and it did not make it into the draft
12 document, and that was a point for a deal if it was in a
13 census tract in which there were no other pre-apps in that
14 census tract, so the decision to go forward at full app
15 would be predicated upon there being no other deals in
16 that census tract. That would for sure achieve the kind
17 of dispersion you're talking about. I also think it would
18 really screw with the development plan in process and
19 that's why we didn't put it in.

20 MR. GOODWIN: Anything else, Marni?

21 MS. HOLLOWAY: No, not on that item.

22 MR. GOODWIN: So I need a motion to approve and
23 are we going to amend this?

24 MS. HOLLOWAY: Still have a little bit more to
25 go.

1 MR. BRADEN: I would make one comment on the
2 item. So obviously, I think what Zachary pointed out, and
3 we kind of talked about it yesterday too, that two
4 projects in the same census tract doesn't seem like a good
5 idea, but right now what we're saying is we can't see an
6 easy solution to that so we're going to realize that it's
7 an issue and then maybe in future deals be able to figure
8 something out. Is that what the consensus was?

9 MR. IRVINE: I think that that's one
10 possibility. I think another possibility is that we do
11 have a legislative session coming up, and if anybody wants
12 to get with their members and pursue some sort of a
13 legislative resolution to that, then that's an option.

14 MR. BRADEN: Okay.

15 MR. GOODWIN: You said you had more?

16 MS. HOLLOWAY: Yes. I said that's the QAP but
17 that's just the scoring part.

18 MR. GOODWIN: Sorry.

19 MS. HOLLOWAY: So now we get to move through
20 the rest of the subchapters that were moved into Chapter
21 11.

22 MR. GOODWIN: Okay.

23 MS. HOLLOWAY: Subchapter B, Site and
24 development requirements and restrictions. The railroad
25 item under the undesirable site features has been modified



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
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Leo Vasquez, Member

May 16, 2019

Writer's direct dial: 512.475.3875
Email: david.cervantes@tdhca.state.tx.us

Barry Palmer
Coats Rose, PC
9 Greenway Plaza, Ste. 1000
Houston, Texas 77046

RE: APPEAL OF APPLICATION LOG STATUS - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 19273
NOLANA VILLAS, MCALLEN

Dear Mr. Palmer:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your appeal, dated May 6, 2019, regarding the application submission indicated above. Staff had determined that the Application violated 10 TAC §11.3(g) related to Proximity of Development Sites because the Development Site is within 1,000 feet of the Development Site for Application 19064, 4242 Jackson Apartments, which was the higher scoring Application by virtue of the tie-breaker. As such, the Application was shown on the log as ineligible for an award as long as the higher scoring Application was viable, subject to the Applicant's appeal rights.

The appeal asserts that when staff re-ordered the Applications in Urban subregion 11 on the April 26, 2019 Application Log, staff misinterpreted 10 TAC §11.3(g) regarding the applicability of the rule to these Development Sites because the intervening property does have a clear and apparent economic reason and the intervening property was not created for the apparent purpose of creating a separation under the rule. I agree with your assessment, and accordingly I am granting the appeal. The next posted log will return your Application to its previous status in Urban subregion 11.



Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cervantes". The signature is stylized with a large initial "D" and a long horizontal stroke.

David Cervantes

Acting Executive Director



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Austin, TX 78701
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Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
cbast@lockelord.com

May 8, 2019

VIA E-MAIL TRANSMISSION

Mr. David Cervantes
Acting Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711-3941

Re: Appeal for Priority Status
TDHCA No. 19331 – Avanti at Emerald Point

Dear David:

Our Firm represents the Applicant¹ for Housing Tax Credits for the Development referenced above. This Application consistently maintained a “priority” position in the application logs posted on March 12, March 15, and April 12. When a new application log was posted on April 26, the “priority” position was removed, with a notation that the site is “within 1,000’ of #19064”. This notation appears to refer to Section 11.3(g) of the QAP, which states as follows:

(g) Proximity of Development Sites. If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites or on sites separated by not more than 1,000 feet where the intervening property does not have a clear and apparent economic reason and/or was not created for the apparent purpose of creating separation under this rule, or on sites carved out of either a single parcel or a group of contiguous parcels that were under common ownership or control at any time during the preceding twenty-four month period are submitted in the same program year, the lower scoring Application, including consideration of tie-breaker factors if there are tied scores, will be considered a non-priority Application and will not be reviewed unless the higher scoring Application is terminated or withdrawn.

¹ Capitalized terms used but not defined in this letter will have the meanings given them in the 2019 Qualified Allocation Plan.

The removal of the “priority” position for the Application takes it out of contention for a Housing Tax Credit award.

The Applicant hereby appeals the staff’s decision to remove the “priority” designation. The proximity of Application # 19331 - Avanti at Emerald Point to Application #19064 - 4242 Jackson Apartments does not meet the criteria of Section 11.3(g) of the QAP.

Legal Analysis

In order for Application #19331 to be designated “non-priority” based upon its proximity to Application #19064, it would need to meet all of the elements of Section 11.3(g) of the QAP, as follows:

- If two or more Competitive HTC Applications that are proposing Developments serving the same Target Population on contiguous sites or

*While Application #19331 and Application #19064 are serving the same Target Population, they are not on contiguous sites. In fact, Application #19331 is not contiguous with any other Competitive HTC Applications serving the same Target Population. Attached is a Hidalgo County District Property Map (the “**Map**”), which clearly shows that Application #19331 – Avanti at Emerald Point is not contiguous to any other Competitive HTC Application serving the same Target Population.*

- on sites separated by not more than 1,000 feet where the intervening property does not have a clear and apparent economic reason and/or was not created for the apparent purpose of creating separation under this rule or. . .

Application #19331 and Application #19064 are within 1,000 feet of each other, however, the intervening property does have a clear and apparent economic reason. The intervening property between Application #19331 and Application #19064 is owned by the McAllen Independent School District, as shown on the Map. These tracts total over 22.5 acres, are separately platted, and had a clear and apparent economic reason for existence long before the Application entered into a contract to buy its Development Site. Presumably, the school district is holding these tracts for future school development. Nothing about the intervening property between Application #19331 and Application #19064 was created solely for the purpose of establishing separation.

- on sites carved out of either a single parcel or a group of contiguous parcels that were under common ownership or control at any time during the preceding twenty-four month period

The Map shows that the site for Application #19331 was not under common ownership with the intervening tracts at any time during the last two years. The proposed Development Site was not carved out of a single parcel or a group of contiguous parcels

that were under common ownership or control at any time during the preceding twenty-four month period.

Argument: An Application within 1,000 feet of another Application should be considered “non-priority” only if it meets all of the criteria in Section 11.3(g) of the QAP. As shown above, Application #19331 clearly does not meet these requirements. The proposed Development Site for Application #19331 is not contiguous to the Development Site for Application #19064. The intervening land between Application #19331 and Application #19064 was not carved out of a single parcel and was not created to establish separation. The intervening land has an independent economic purpose.

Concluding Remarks

Section 11.3(g) of the QAP was changed between 2018 and 2019 to address an issue that occurred in the 2018 Application Round. Previously, the QAP said that if there were two Applications serving the same Target Population on contiguous sites, the lower scoring Application would be given “non-priority” status. In an apparent effort to circumvent the rule, a 2018 Applicant carved several Development Sites out of one tract, leaving a 10 foot strip between them so that the sites would not be considered contiguous.

TDHCA Board Books reveal that this change to the QAP received no comments during the public comment period. The lack of commentary indicates that the Applicant community understood what TDHCA was expecting and agreed this change was appropriate for the competitive process. Our client read the plain language of the rule and expected that its Application would not be deemed “non-priority”. The first and third elements of the rule, identified by bullet point above, do not apply. The second element of the rule does apply because the Development Sites are within 1,000 feet of one another, but the fact that the intervening tracts have a distinct economic purpose and separate ownership means the rule does not apply.

Our client believes the plain language of the rule is clear. Thus, TDHCA must grant the appeal to return the Applicant’s “priority” status. Prompt resolution of this question is critical to all of the Applicants in Region 11 Urban, as the “readiness to proceed” designation has all of the Applicants making economic decisions based upon the likelihood of a Housing Tax Credit award.

If there are any questions about this appeal, we are happy to address them. Thank you.

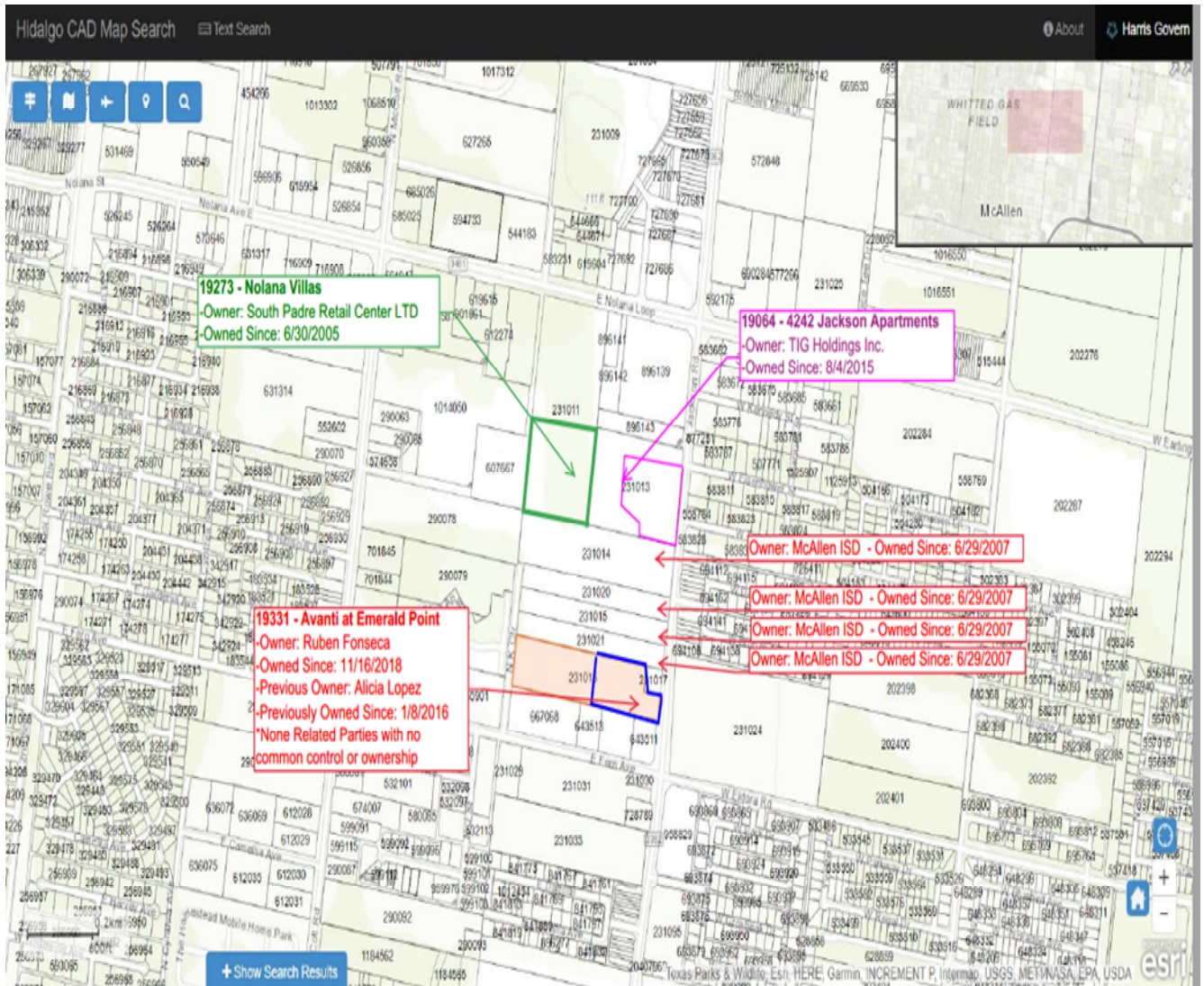
Sincerely,



Cynthia L. Bast

Attachment
cc: Madhouse Development Services

Attachment





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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Leo Vasquez, Member

May 16, 2019

Writer's direct dial: 512.475.3875
Email: david.cervantes@tdhca.state.tx.us

Cynthia Bast
Locke Lord, LLP
600 Congress, Ste. 2200
Austin, Texas 78701

RE: APPEAL OF APPLICATION LOG STATUS - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 19331
AVANTI AT EMERALD POINT, MCALLEN

Dear Ms. Bast:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your appeal, dated May 8, 2019, regarding the application submission indicated above. Staff had determined that the Application violated 10 TAC §11.3(g) related to Proximity of Development Sites because the Development Site is within 1,000 feet of the Development Site for Application 19064, 4242 Jackson Apartments, which was the higher scoring Application by virtue of the tie-breaker. As such, the Application was shown on the log as ineligible for an award as long as the higher scoring Application was viable, subject to the Applicant's appeal rights.

The appeal asserts that when staff re-ordered the Applications in Urban subregion 11 on the April 26, 2019 Application Log, staff misinterpreted 10 TAC §11.3(g) regarding the applicability of the rule to these Development Sites because the intervening property does have a clear and apparent economic reason and the intervening property was not created for the apparent purpose of creating a separation under the rule. I agree with your assessment, and accordingly I am granting the appeal. The next posted log will return your Application to its previous status in Urban subregion 11.



Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cervantes", with a long horizontal stroke extending to the right.

David Cervantes

Acting Executive Director

TDHCA Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Paul A. Braden, *Member*
Asusena Reséndiz, *Member*
Sharon Thomason, *Member*
Leo Vasquez, *Member*

June 18, 2019

Writer's direct dial: 512.475.3875
Email: david.cervantes@tdhca.state.tx.us

Michelle J. Snedden
Shackelford Attorneys and Counselors
9201 N. Central Expressway, 4th Floor
Dallas, Texas 75231

RE: APPEAL OF APPLICATION LOG STATUS - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 19158
PENDLETON SQUARE APARTMENTS, HARLINGEN

Dear Ms. Snedden:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your letter, dated June 5, 2019, regarding the application submission indicated above. After appeals for other applicants were granted by the Department's Acting Director, staff determined that the above-referenced Application no longer had "priority" status, which was changed by staff and reflected on the application log. Your letter seeks to "appeal the removal of the 'priority' designation" for this application. Further, your letter asserts that the appeals of other applicants should not have been granted because their appeals were submitted after the seventh day following the posting of the application log on the Department's website.

Priority designation:

At the head of every application log is the following statement:

"Priority" status means the Application is scheduled for staff review. Applicants scoring under Readiness to Proceed should refer to 10 TAC §11.9(c)(8)(C) regarding priority status.

This practical definition is generally reflective of staff's view concerning which applications are believed most likely to be competitive, and should undergo a full programmatic review first. Designation on the application log as "priority" is not an award, nor a requirement of award by statute or rule, and "priority status" is not a statutory requirement of award. Accordingly, applications designated on an application log as "priority" may not receive an award, and applications not designated as "priority" on a given log may receive an award. Where the designation of "priority" is relevant is in the case of



applications that have selected "Readiness to proceed" points under 10 TAC §11.9(c)(8). In §11.9(c)(8)(C), an extension to the November deadline to provide an executed construction contract is given for the amount of time an awarded application spent on the application log in "non-priority status." The Application that is the subject of your letter has selected readiness to proceed points, so the staff decision regarding removal of priority status on the application log will have consequences to the application if it is eventually awarded.

Accordingly, it is unclear whether staff's removal of "priority" status on the application log from this application constitutes an appealable action under 10 TAC §11.902, but, out of an abundance of caution, I will accept the June 5th letter on its face as an "appeal [of] the removal of the 'priority' designation of Project Owner's application . . ." and will address this designation in isolation from the other issues raised in your letter.

Given that "priority" status, as reflected on the application, is an internal staff designation that is non-determinative of an award, I see no evidence or argument in your June 5th letter that provides me a rationale to order staff to place the word "priority" back on the application log associated with this Application, and continue evaluation of this application ahead of those that staff currently feels are more likely to receive an award. Furthermore, the designation of "priority" for this application, under 10 TAC §11.9(c)(8)(C), would only serve to decrease the amount of extension available beyond the November deadline in the event the application receives an award. Accordingly, I am denying the appeal as to staff's removal of the "priority" status for this Application from the application log.

Timeliness of Two Appeals in Subregion

Appealing a decision made regarding an Application filed by, or an issue related to, another Applicant is categorically prohibited by Department rules. Accordingly, the following is an explanation of events and how they were treated under the rules, and is not an acceptance of your argument as part of a valid appeal.

Your letter cites Tex. Gov't Code Section 2306.6715(c) and 10 TAC §11.1(b) of the Qualified Allocation Plan (QAP), both of which deal with the timing of appeals. Appeals are also the subject of 10 TAC §11.902 of the QAP, which includes the following language at §11.902(c):

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation *or otherwise notifies the Applicant or Development Owner of a decision subject to appeal.* (emphasis added)

Indeed, the QAP specifically interprets the start of the appeal deadline in Tex. Gov't Code 2306.6715(c) through 11.1(b) to be the later of the posting of the log on the website or notice of a scoring change:

(b) As provided by Tex. Gov't Code 2306.6715(c) for Competitive HTC Applications, an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that Applicant's score or the seventh day from the date of transmittal of a scoring notice

The 11.1(b) interpretation of 2306.6715(c) has been in the QAP in substantially the same form for the last three years, and "scoring notice" is not a defined term.

The application log was posted on the Department's website after business hours on Friday, April 26, 2019. Though ordinarily staff sends out an email notice of the posting to the Department's subscribers immediately following the posting of the log, such notice to the applicants and development owners of the posting of the log did not occur until the next week, on May 1, 2019. Harmonizing the statute and the rules, both actions, the posting of the log and the issuance of the email notice, could constitute appealable actions by staff. With the latest action being the issuance of the email notification, staff correctly used that date as the start date of the appeal period, making both appeals referenced in your letter timely.

That said, I return your attention to 10 TAC §11.902(b) of the QAP, which states:

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

As you appear to acknowledge in your letter, you are statutorily precluded from appealing the scoring of another application. Thus, you may consider your appeal as to the designation of "priority" on the application log to be denied, and any other disagreement you have regarding the Department's handling of another Application's appeal or scoring is outside my authority and the Board's purview (by rule and statute) to consider on appeal.

In accordance with your June 5th letter, the matter of the Application's "priority" status will be placed on the agenda for the June 27, 2019, meeting. By way of clarification, your letter stated that if my decision was "to affirm the appeals of Avanti at Emerald Point and Nolana Villas, then Project Owner further . . . requests this matter be appealed to the Board;" but, by this letter, I am not taking any action on the referenced appeals of other applicants, nor will your appeal to the Board to be considered an action item for determining the appeals of other applicants. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,



David Cervantes
Acting Director

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on timely filed appeal of HTC Application 19215 West Ridge Apartments

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) application 19215 West Ridge Apartments, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, on the posted application log dated April 26, 2019, Application 19215 West Ridge Apartments is indicated as a “priority” application in subregion 11 Urban;

WHEREAS, on the posted application log dated May 29, 2019, the Application is not listed as a “priority” application;

WHEREAS, the Applicant filed an appeal of the removal of the “priority status”; and

WHEREAS, the Acting Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal for 19215 West Ridge Apartments regarding its “priority status” is hereby denied.

BACKGROUND

Pursuant to 10 TAC §11.9(c)(8) of the Qualified Allocation Plan (QAP) related to scoring under Readiness to Proceed:

(C) Non-priority Applications seeking points under this paragraph will receive an extension of the November deadline equivalent to the period of time they were in nonpriority status, if they ultimately receive an award. The period of non-priority status begins on the date the Department publishes a list showing an Application is not in priority status.

So that Applicants can be aware when their Application is or is not in “priority status”, staff added a “Priority” column to the application log. “Priority” designation does not grant any particular status, nor does it necessarily result in an Application being recommended for an allocation of

credits. An application can go in and out of “priority status” throughout the review period from March to July each year, either by actions taken by staff related to that application (for example issuance of scoring notices or handling of an appeal), or by actions taken regarding other Applications on the list, which then shift other applications accordingly. In this case, actions taken by staff regarding other applications in the same subregion as this Application caused the noted Application to be removed from “priority status.” The Application proposes the New Construction of 112 Units for a general population in Pharr.

Priority designation:

At the head of every application log is the following statement:

“Priority” status means the Application is scheduled for staff review. Applicants scoring under Readiness to Proceed should refer to 10 TAC §11.9(c)(8)(C) regarding priority status.”

This practical definition is generally reflective of staff’s view concerning which applications are believed most likely to be competitive, and therefore should undergo a full programmatic review first. Designation on the application log as “priority” is not an award, nor a requirement of award by statute or rule, and “priority status” is not a statutory requirement of award. It is merely a way to help prioritize the work of the Multifamily and Real Estate Analysis staff. Accordingly, applications designated on an application log as “priority” may not receive an award, and applications not designated as “priority” on a given log may receive an award. The only practical application of the designation of “priority” is in the case of applications that have selected “Readiness to proceed” points under 10 TAC §11.9(c)(8) of the QAP. In §11.9(c)(8)(C), an extension to the November deadline to close all financing and provide an executed construction contract is given for the amount of time an awarded application spent on the application log in “non-priority status.” The Application that is the subject of the appeal has selected readiness to proceed points, so the staff decision regarding removal of priority status on the application log will have consequences to the application if it is eventually awarded; however, in this case, removal of designation provides the Applicant with more time to meet their readiness to proceed deadline, if awarded, and does not present a negative repercussion.

Accordingly, it is unclear whether staff’s removal of “priority” status on the application log from this application constitutes an appealable action under 10 TAC §11.902 of the QAP, but, out of an abundance of caution, staff has accepted the June 5, 2019 letter on its face as an “appeal [of] the removal of the ‘priority’ designation of Project Owner’s application . . .” and has addressed this designation in isolation from the other issues raised in the appeal.

Given that “priority” status, as reflected on the application, is an internal staff designation that is non-determinative of an award, the Acting Executive Director saw no evidence or argument in the appeal that provides a rationale for staff to place the word “priority” back on the application log associated with this Application, and continue evaluation of this application ahead of those that staff currently feels are more likely to receive an award. Accordingly, the appeal was denied.

Furthermore, the designation of “priority” for this application, under 10 TAC §11.9(c)(8)(C), would only serve to decrease the amount of extension available beyond the November deadline in the event the application receives an award.

Timeliness of Two Appeals By Other Applicants in Subregion

As the Applicant appears to acknowledge in the appeal, the Applicant is statutorily precluded from appealing the scoring of another application. Per Tex. Gov’t Code Section 2306.6715 related to Appeals:

(b) An applicant may not appeal a decision made under Section 2306.6710 regarding an application filed by another applicant.

Per 10 TAC §11.902 of the QAP:

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

Accordingly, the Acting Director explained the events and rules that governed the decision to accept as timely the appeals referenced by this Applicant, but denied that there existed a right for this Applicant to appeal decisions made regarding an application filed by, or an issue related to, another Applicant.

19215 West Ridge Apartments Appeal Documents

June 5, 2019

Via Email: david.cervantes@tdhca.state.tx.us

David Cervantes
Interim Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

In Re: Appeal of Application Log Status for TDHCA: West Ridge Apartments - 19215

Dear Mr. Cervantes:

This law firm represents West Ridge Housing Development, LP (“Project Owner”), and its sponsor, [Cesar Chavez Foundation]. I have been requested by Paul S. Park, Secretary of the Foundation, to appeal the removal of the “priority” designation of Project Owner’s application (the “Application”) for competitive housing tax credits for its proposed development “West Ridge Apartments” to be located in Pharr, Texas (the “Project”).

Project Owner’s appeal of the application log status is based on our position that TDHCA granted two other applicants’ appeals that were not submitted timely in accordance with Tex. Gov’t Code §2306.6715(c) (the “Code”) and the 2019 Qualified Allocation Plan (“QAP”). TDHCA’s granting of these appeals removed Project Owner’s Application out of “priority” status. TDHCA’s considering and granting of these appeals did not comply with non-waivable requirements of the Code and, therefore, those appeals should have been denied.

FACTS

On April 23, 2019, Project Owner’s Application held a “priority” position in the application log. Neither Avanti at Emerald Point (#19331) nor Nolana Villas (#19273) had a “priority” designation due to both developments being located within 1,000 feet of another application in Region 11 (Urban) and staff’s determination that those applications violated Section 11.3(g) of the QAP.

On May 29, 2019, TDHCA posted a new application log removing the “priority” status of Project Owner’s Application and giving Avanti at Emerald Point and Nolana Villas “priority” status. The reversal in “priority” status was the result of TDHCA granting certain appeals

submitted by Avanti at Emerald Point and Nolana Villas, and was based in each instance on the argument that the intervening land in question has an independent economic purpose and therefore did not meet the criteria of Section 11.3(g) of the QAP. Both appeals (in addition to the Executive Director's approval of those appeals) are attached hereto at Exhibit "A".

As noted above, the application log in question was published on TDHCA's website on April 26, 2019. The Code and the QAP require that any appeal related to that application log be filed by May 3, 2019—seven (7) days from the date the log was published on TDHCA's website, not the date the list serv was circulated. The appeal submitted on behalf of Nolana Villas was submitted on May 6, 2019. The appeal submitted on behalf of Avanti at Emerald Point was submitted on May 8, 2019. It is our opinion that granting of both appeals by TDHCA should be rescinded due to failure to comply with the statutory deadlines for appeals.

LEGAL BASIS – STATUTORY COMPLIANCE

Please see below excerpt from Tex. Gov't Code §2306.6715(c) that makes it clear an appeal should be submitted no later than the seventh day after the date TDHCA publishes the application log:

Tex. Gov't Code §2306.6715(c):

An applicant must file a written appeal authorized by this section with the department not later than the seventh day after the date the department publishes the results of the application evaluation process provided by Section 2306.6710 .

Furthermore, please see below excerpt from Section 11.1(b) of the QAP that directly references the above Code section and goes further to confirm that "publishes" means publication on the Department's website:

QAP:

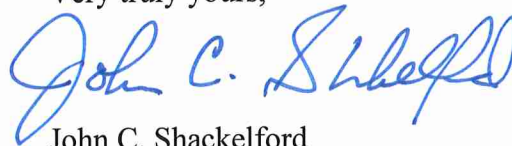
As provided by Tex. Gov't Code §2306.6715(c) for Competitive HTC Applications, an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that Applicant's score or the seventh day from the date of transmittal of a scoring notice.

Although we are aware an applicant cannot directly appeal a decision made regarding an application filed by another applicant, this is a statutory requirement that cannot be waived by TDHCA. The plain language of the Code and the QAP make it clear that both Avanti at Emerald Point and Nolana Villas were required to file an appeal by May 3, 2019—seven days from the date the log was published on TDHCA's website.

CONCLUSION

Based upon the foregoing, Project Owner respectfully requests that the granting of the appeals in favor of Avanti at Emerald Point and Nolana Villas be rescinded due to failure to comply with the statutory deadlines and that Project Owner's "priority" designation be reinstated. If your decision, however, is to affirm the appeals of Avanti at Emerald Point and Nolana Villas, then Project Owner further hereby respectfully requests this matter be appealed to the Board for consideration at the next Board meeting scheduled on June 27, 2019.

Very truly yours,



John C. Shackelford

Schedule of Exhibits: A

cc: Marni Holloway (via email)
Sharon Gamble (via email)
Welton Smith (via email)
Paul Park (via email)
Jennifer Bartlett (via email)
Lauren Osterman (of the Firm)

TDHCA Response



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Leo Vasquez, *Member*

June 18, 2019

Writer's direct dial: 512.475.3875
Email: david.cervantes@tdhca.state.tx.us

John C. Shackelford
Shackelford Attorneys and Counselors
9201 N. Central Expressway, 4th Floor
Dallas, Texas 75231

RE: APPEAL OF APPLICATION LOG STATUS - 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATIONS 19215
WEST RIDGE APARTMENTS, PHARR

Dear Mr. Shackelford:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your letter, dated June 5, 2019, regarding the application submission indicated above. After appeals for other applicants were granted by the Department's Acting Director, staff determined that the above-referenced Application no longer had "priority" status, which was changed by staff and reflected on the application log. Your letter seeks to "appeal the removal of the 'priority' designation" for this application. Further, your letter asserts that the appeals of other applicants should not have been granted because their appeals were submitted after the seventh day following the posting of the application log on the Department's website.

Priority designation:

At the head of every application log is the following statement:

"Priority" status means the Application is scheduled for staff review. Applicants scoring under Readiness to Proceed should refer to 10 TAC §11.9(c)(8)(C) regarding priority status.

This practical definition is generally reflective of staff's view concerning which applications are believed most likely to be competitive, and should undergo a full programmatic review first. Designation on the application log as "priority" is not an award, nor a requirement of award by statute or rule, and "priority status" is not a statutory requirement of award. Accordingly, applications designated on an application log as "priority" may not receive an award, and applications not designated as "priority" on a given log may receive an award. Where the designation of "priority" is relevant is in the case of



applications that have selected "Readiness to proceed" points under 10 TAC §11.9(c)(8). In §11.9(c)(8)(C), an extension to the November deadline to provide an executed construction contract is given for the amount of time an awarded application spent on the application log in "non-priority status." The Application that is the subject of your letter has selected readiness to proceed points, so the staff decision regarding removal of priority status on the application log will have consequences to the application if it is eventually awarded.

Accordingly, it is unclear whether staff's removal of "priority" status on the application log from this application constitutes an appealable action under 10 TAC §11.902, but, out of an abundance of caution, I will accept the June 5th letter on its face as an "appeal [of] the removal of the 'priority' designation of Project Owner's application . . ." and will address this designation in isolation from the other issues raised in your letter.

Given that "priority" status, as reflected on the application, is an internal staff designation that is non-determinative of an award, I see no evidence or argument in your June 5th letter that provides me a rationale to order staff to place the word "priority" back on the application log associated with this Application, and continue evaluation of this application ahead of those that staff currently feels are more likely to receive an award. Furthermore, the designation of "priority" for this application, under 10 TAC §11.9(c)(8)(C), would only serve to decrease the amount of extension available beyond the November deadline in the event the application receives an award. Accordingly, I am denying the appeal as to staff's removal of the "priority" status for this Application from the application log.

Timeliness of Two Appeals in Subregion

Appealing a decision made regarding an Application filed by, or an issue related to, another Applicant is categorically prohibited by Department rules. Accordingly, the following is an explanation of events and how they were treated under the rules, and is not an acceptance of your argument as part of a valid appeal.

Your letter cites Tex. Gov't Code Section 2306.6715(c) and 10 TAC §11.1(b) of the Qualified Allocation Plan (QAP), both of which deal with the timing of appeals. Appeals are also the subject of 10 TAC §11.902 of the QAP, which includes the following language at §11.902(c):

(c) An Applicant or Development Owner must file its appeal in writing with the Department not later than seven (7) calendar days after the date the Department publishes the results of any stage of the Application evaluation *or otherwise notifies the Applicant or Development Owner of a decision subject to appeal.* (emphasis added)

Indeed, the QAP specifically interprets the start of the appeal deadline in Tex. Gov't Code 2306.6715(c) through 11.1(b) to be the later of the posting of the log on the website or notice of a scoring change:

(b) As provided by Tex. Gov't Code 2306.6715(c) for Competitive HTC Applications, an Applicant is given until the later of the seventh day of the publication on the Department's website of a scoring log reflecting that Applicant's score or the seventh day from the date of transmittal of a scoring notice

The 11.1(b) interpretation of 2306.6715(c) has been in the QAP in substantially the same form for the last three years, and "scoring notice" is not a defined term.

The application log was posted on the Department's website after business hours on Friday, April 26, 2019. Though ordinarily staff sends out an email notice of the posting to the Department's subscribers immediately following the posting of the log, such notice to the applicants and development owners of the posting of the log did not occur until the next week, on May 1, 2019. Harmonizing the statute and the rules, both actions, the posting of the log and the issuance of the email notice, could constitute appealable actions by staff. With the latest action being the issuance of the email notification, staff correctly used that date as the start date of the appeal period, making both appeals referenced in your letter timely.

That said, I return your attention to 10 TAC §11.902(b) of the QAP, which states:

(b) An Applicant or Development Owner may not appeal a decision made regarding an Application filed by or an issue related to another Applicant or Development Owner.

As you appear to acknowledge in your letter, you are statutorily precluded from appealing the scoring of another application. Thus, you may consider your appeal as to the designation of "priority" on the application log to be denied, and any other disagreement you have regarding the Department's handling of another Application's appeal or scoring is outside my authority and the Board's purview (by rule and statute) to consider on appeal.

In accordance with your June 5th letter, the matter of the Application's "priority" status will be placed on the agenda for the June 27, 2019, meeting. By way of clarification, your letter stated that if my decision was "to affirm the appeals of Avanti at Emerald Point and Nolana Villas, then Project Owner further . . . requests this matter be appealed to the Board;" but, by this letter, I am not taking any action on the referenced appeals of other applicants, nor will your appeal to the Board to be considered an action item for determining the appeals of other applicants. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,



David Cervantes
Acting Director

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on timely filed appeal of HTC Application 19307, Briarwest Apartments

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) application 19307, Briarwest Apartments, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, staff determined that the Application did not disclose the Development's proximity to a high voltage transmission line, as required by 10 TAC §11.101(a)(2) related to Undesirable Site Features;

WHEREAS, the Application was recommended for termination due to the Applicant's inability to provide documentation that existed prior to submission of the Application to meet threshold requirements;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Acting Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal for 19307, Briarwest Apartments is hereby denied.

BACKGROUND

10 TAC §11.204 (the Rule), related to Required Documentation for Application Submission, identifies the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. It includes those items required under Tex. Gov't Code, Chapter 2306 (Statute), §42 of the Internal Revenue Code (the Code), and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. The Rule creates the format for information required by Statute and Code, and information necessary to evaluate and underwrite the Application.

The Application proposes the New Construction of 120 units for a general population in Houston.

The Department received a request for Administrative Deficiency (RFAD) alerting staff that the Application did not disclose the Development's proximity to a high voltage transmission line, as required by 10 TAC §11.101(a)(2) related to Undesirable Site Features. Per the rule:

Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility.

(D) Development Sites in which any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

Staff determined that there is a high voltage power substation across the street from the Development Site with high voltage lines running along the western border of the site, and that Application materials called for buildings and designated recreational areas to be located within 100 feet of the nearest line or structural element of an overhead high voltage transmission line, support structure for high voltage transmission lines, or other similar structure. Because the Application did not meet the threshold requirement for disclosure, the Application was terminated, pending the Applicant's ability to appeal.

The appeal states that 10 TAC §11.101(a)(2) related to Undesirable Site Features (USF) does not require the Applicant to disclose a USF. The appeal states that the only place this issue is raised is "in the Application itself, as part of the Owner Certification." The appeal asserts that where the application requires the Development Owner to certify that "the Development **is not** located in an area with undesirable site features as further described in §11.101(a)(2) of the Qualified Allocation Plan" (emphasis in original), the Development Owner is not certifying fact but "intention," so the selection that states that "the proposed Development **is** located in an area with an undesirable site feature and mitigation to be considered by staff and the Board is included in the Application" is only applicable if the Development Owner intends for it to be so. The appeal argument then concludes that "[t]he Application did not disclose an inability to meet the threshold requirement of 100' from any HV structure because the buildings were never intended to be located within 100' of the HV structures."

Staff notes that this logic departs dramatically from the Applicant's response to the RFAD last month, wherein the Applicant appeared to readily acknowledge the development site's close proximity to overhead power transmission lines and a power substation, but had concluded that they were not "high voltage" and did not need to be disclosed in the Application. As to the Applicant's current argument that its "intention" was not to develop the site within 100 feet of the various high voltage structures immediately adjacent to the Development Site, the

Department relies on the materials submitted with the application. In this case, the Applicant submitted a site plan that would clearly demonstrate the Development's proximity to an undesirable site feature, if the Applicant had actually mentioned the undesirable site feature in its Application. Therein lies the problem: the Applicant submitted an application to develop a site in a way that would require disclosing its proximity to high voltage lines and discussing mitigation, and did not. Indeed, but for a third party pointing out what the Application had not revealed (that a power substation is next to the property and high voltage power lines run along two of the four boundary lines of the development site) one would presume the property would have been developed as proposed in the Application if it received an award.

The appeal asserts that because certain USF rules allow for measurement to the feature to be to the residential building instead of to the Development Site boundary, the rules "Inherently allow for flexibility of site design as an opportunity to avoid ineligibility." The appeal then admits that the Application as submitted did not meet the requirements of the rules and that the Development Site Plan was changed to bring the Development into compliance, "completely obviating the need to provide any mitigating information or seek a Board determination of Site eligibility." But 10 TAC §11.101(a)(2) requires that the Board be provided "information regarding mitigation of the applicable undesirable site feature(s)" sufficient to support Site eligibility. The Applicant was required to state that one or more of the USFs exists within the stated proximity, and that there are mitigating factors that may make the Development Site eligible. None of this information was included in the Application. The ease by which the site plan could have avoided a conflict with the QAP is immaterial to this analysis. The time to have submitted a site plan that avoided proximity to a USF was when the Application was submitted, rather than three months later.

Lastly, the Development Owner Certification is not just a form in the Application. Requirements for the certification are found in 10 TAC §11.204(1), which states:

Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

Subchapter C relates to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules. "Subchapter B of this chapter" relates to Site and Development Requirements and Restrictions and is the subchapter that includes Undesirable Site Features. The appeal's assertion that the certification seeks the Applicant's intentions instead of the Application's facts, and presumes flexibility in meeting the requirement, trivializes the

importance of what applicants are certifying to this Board about the nature and details of the application.

Staff recommends the Board deny the appeal.

19307 Briarwest Apartments

Termination Notice



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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May 28, 2019

Writer's direct dial: 512/475-1676
Email: marni.holloway@tdhca.state.tx.us

Nathan Kelly
NH Briarwest LP
4001 W. Sam Houston Pkwy N., Ste. 100
Houston, TX 77043

RE: STATUS OF 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19307 BRIARWEST APARTMENTS,
HOUSTON

Dear Mr. Kelly:

The Texas Department of Housing and Community Affairs ("the Department") is in receipt of the application submission indicated above. The Application did not disclose the Development's proximity to a high voltage transmission line, as required by 10 TAC §11.101(a)(2) related to Site Control. Per the rule:

Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility.

(D) Development Sites in which any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

Because the Application did not meet the threshold requirement for disclosure, the Application is terminated, pending the Applicant's ability to appeal.



This Application has requested Readiness to proceed points under 10 TAC 11.9(c)(8). From the date the Supplemental Board Book was posted on May 20, 2019, until this matter is resolved, this will be considered a non-priority Application. If you are successful with your appeal and this Application is awarded credits, the closing deadline will be extended for the same number of days between May 20, 2019, and the date your appeal is granted.

An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §11.902 of the 2019 QAP. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instructions on the appeals process.

If you have any questions or concerns, please contact me at 512-475-1676 or by email at marni.holloway@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marni Holloway', with a long, sweeping flourish extending to the right.

Marni Holloway
Director of Multifamily Finance

Appeal Documents

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ANDREA HOPE J. STEEL
DIRECTOR

ASTEEL@COATSROSE.COM
DIRECT: (713) 653-7334
FAX: (713) 890-3931

June 4, 2019

Via Email

David Cervantes, Acting Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: TDHCA #19307 – Briarwest Apartments (the “Project”);
Appeal of Termination Notice.

Dear Mr. Cervantes:

This appeals the termination of the 9% Application (“Application”) submitted by NH Briarwest LP (the “Applicant”) for the Project, pursuant to notice sent by Marni Holloway, Director of Multifamily Finance, dated May 28, 2019 (“Notice”). Per the Notice, the Application is being terminated because it “did not meet the threshold requirement for disclosure” when the Application did not disclose the Project’s proximity to a high voltage transmission line, as Staff stated was required by 10 TAC §11.101(a)(2):

(2) Undesirable Site Features. Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. ...

...

(D) Development Sites in which any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles.

(the “USF Rule”). We respectfully request that you reconsider Staff’s decision and rescind the termination decision based upon the following:

1. No disclosure is required. There is no disclosure requirement for Undesirable Site Features (“USFs”) – if USFs exist within the applicable distances, the application is

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4841-2705-0648.v4

ineligible unless the Board determines that mitigation is sufficient and supports the Site's eligibility despite proximity. In the case of high voltage transmission lines, support structures for high voltage transmission lines, or other similar structures (collectively, "HV Structures"), it is not the existence of such HV Structures that creates a problem – it is the distance of the Development's buildings or designated recreational areas from the HV Structures. [We note that Disclosure is required for Neighborhood Risk Factors, and the juxtaposition of Undesirable Site Features with Neighborhood Risk Factors in the QAP disguises this distinction.

Whether a Development Site has an issue with USFs comes up only in the Application itself, as part of the Owner Certification. The Owner is asked to choose from a list of options regarding USFs. For new construction projects like Briarwest, there are four general options to choose from: (1) no undesirable site features; (2) an exemption applies; (3) existence of USF(s) but a local ordinance provides for a lesser distance than the QAP requires; or (4) existence of USF(s) but other mitigation should be considered. What this means is that the Owner must certify regarding *intention*. If the Owner intends that the Development Site be within the prohibited distances set forth in the USF Rule, then the Owner must set out either an exemption, local ordinance, or other mitigating factors as to why the Development Site should still be found eligible despite not meeting the QAP distance requirements.

In Briarwest, the Applicant never intended to develop a Site where the buildings or recreational areas would be within 100' of HV Structures. Accordingly, when the Owner certified that "The Development is not located in an area with undesirable site features as further described in §11.101(a)(2) of the Qualified Allocation Plan," such representation was accurate.

Staff's determination that the "threshold requirement for disclosure" was not met is an inaccurate reading of the USF Rule. The threshold is to comply with the minimum distance requirement, but here it is being erroneously intertwined with the concept of disclosure (making known the inability to meet such requirement). These are separate issues. The Application did not disclose an inability to meet the threshold requirement of 100' from any HV Structure because the buildings were never intended to be located within 100' of the HV Structures.

2. The Development Site is eligible, obviating the need for any mitigation or a ruling of eligibility. The USF Rule establishes a threshold whereby Development Sites within the applicable distance of certain USFs are deemed fundamentally ineligible unless the Board determines that local requirements or other sufficient mitigating factors exist to warrant the Site eligible despite being within the QAP's prohibited distance. This Rule ensures LIHTC housing is located in areas that do not unduly expose the tenants to adverse environmental factors, but it allows for the Board to consider less prohibitive local requirements or other mitigating factors that may justify eligibility notwithstanding the USF Rule. All except three of the listed USFs require the distance be measured from the USF to the *boundary of the proposed Development Site*. One USF is a prohibition of a pipeline on the Site, and thus has no distance requirement at all. The other two USFs (HV Structures and airport accident zones) do not measure from the boundary of the Development Site but instead relate to the placement of *buildings* within the Site. The USF Rules relating to HV Structures (and airport accident zones) are unique in that these two provisions inherently allow for flexibility of site design as an opportunity to avoid

ineligibility. It follows that the only reason a proposed Development Site would be ineligible under these provisions is if there is no site design possible or desired that allows for the appropriate clearance, in which case an applicant would have the opportunity to convince the Board to find the site eligible based on lower requirements at the local level or other mitigating factors.

Briarwest was always intended to be designed with the buildings and recreational areas located more than 100' from the HV Structures, thus avoiding the need to provide mitigating evidence. From the outset, the Project was deliberately conceived with centralized buildings surrounded by parking, intended to be a significant buffer between the buildings and the adjacent HV Structures and to meet all applicable permitting requirements. When notified that the distance from the HV Structures was in question, the Applicant promptly further surveyed the site and adjacent facilities and learned the closest proposed building was 15 feet too close. Refining the design plan to meet the distance requirement required minimal effort – the buildings were slid a few feet further from the HV Structures, a row of parking spaces was moved to the western portion of the Development Site, and the playground and dog park were relocated to other green space within the Development Site. With this nominal tweak, all parking and amenities were preserved, and the changes were barely noticeable at the Site Plan level. For ease of reference, the original Site Plan and the modified Site Plan are both attached here as **Exhibit A**. The minor adjustment ensures there are no buildings or recreational areas within 100' of the HV Structures, thereby completely obviating the need to provide any mitigating information or seek a Board determination of Site eligibility. Per Staff's report, "the architect provided a revised Site Plan that provides the appropriate distance between applicable development features and the lines."

3. Resolution at the Administrative Deficiency level is appropriate, as determined by both reasonableness and precedent. The Administrative Deficiency process serves to assist Staff by clarifying, supplementing and providing non-material information about an Application which will not necessitate a substantial reassessment or re-evaluation. On the other hand, a "material deficiency" is one which exceeds such a minimal scope and instead exposes a lack of information that, once provided, rises to the level of requiring substantial re-review. The determination of whether information is material or non-material in nature is entitled to be made by the Executive Director (see Section 11.201(7) of the QAP). In contemplating such a determination, it is important to keep in mind that the Board has consistently stated its intention to shun the use of overly restrictive "gotchas" that would eliminate otherwise quality applications due to easily remedied minor oversights.

Terminating the Application here is exactly the sort of "gotcha" situation the Board has been aiming to avoid. This is evident by looking at the remedy necessary to resolve entirely the USF issue – a minor shift in design by a matter of feet that does not change the number, size or even layout of the units, and is barely discernable at the Site Plan level. If this change were to be made post-award, pursuant to the Post-Award Activities Manual (last updated May 2019), the slight alteration would not even be considered a "non-material" amendment. Instead, "minor modifications to the site plan that will not significantly impact development costs, including but not limited to, relocation or rearrangement of buildings on the site (as long as the number of

residential and non-residential buildings remain the same)”) would require nothing more than notification to Asset Management with no Amendment Fee even necessary. It is difficult to reconcile why such a minimal alteration to the Project’s Site Plan, which would resolve the issue entirely, would rise beyond the Administrative Deficiency level and result in termination at this stage, but would merely require notification in the post-award phase. We suggest this type of reasonable “litmus test” be considered when determining whether issues are resolvable at the Administrative Deficiency level or necessitate a higher level of review.

Recent precedent establishes this exact situation has been permitted to be resolved via the Administrative Deficiency process. TDHCA Application #17425, Medio Springs Ranch Apartments in San Antonio (“Medio Springs”), similar to the Applicant, certified that the proposed Development Site was **not** in an area with any USF characteristics, and did **not** disclose on its LIHTC application that the buildings were within the prohibited distance to HV Structures. During the Medio Springs application review, an Administrative Deficiency was issued with regard to the distance from the HV Structures, and “through discussions with the applicant” the applicant was then permitted to provide an email from a local municipal department stating its setback requirement, which was deemed to be sufficient mitigation. Medio Springs was subsequently approved and granted an award as a consent agenda item based on Staff’s recommendation the site be considered eligible. The failure to disclose was never raised and the applicant was granted the opportunity to provide new information for purposes of mitigation. Likewise, TDHCA Application #17411, Villa Americana in Houston (“Villa Americana”), also did **not** disclose on its LIHTC application that there were buildings within the prohibited distance to HV Structures. Staff raised the issue and the applicant responded by providing documentation supporting an exemption. Staff subsequently recommended the site be found eligible, which the Board later approved. While Medio Springs and Villa Americana were 4% LIHTC applications, the Administrative Deficiency process should function the same in both the 4% and 9% LIHTC application realms. However, 4% applications are simply not subject to the same level of competitor oversight as 9% applications. Nonetheless, in Briarwest, while the Applicant *could* have submitted mitigating information and retained the original Site Plan, Applicant thought it better to actually meet the distance requirements considering it was very feasible to do so and an easy tweak to the site design. Accordingly, the Applicant submitted the adjusted Site Plan instead. The minimally modified Site Plan accomplishes the goals and objectives of the USF Rule and should be accepted as a non-material resolution of the inconsistency between the Owner’s Certification and the Site Plan.

4. Where Site compliance is possible, mitigation is unnecessary. As set forth in paragraph 3 above, precedent shows that submission of mitigating factors has been accepted at the administrative deficiency level, even when not initially provided in the Application. Attached as **Exhibit B** is evidence that in the case of this Project, national, state and local standards allow significantly smaller distances than the USF Rule requires. Section 11.101(a)(2) of the QAP provides that when local ordinances regulating the proximity of USFs to multifamily developments have smaller distances than the minimum distances shown in the QAP, then such smaller distances may be used. The evidence in **Exhibit B** of local standards provides more than sufficient justification to determine that the initial Site Plan included in the original Application submission should be deemed eligible, despite buildings being 15’ within the 100’ prohibited

distance. The City of Houston has adopted the 2017 National Electric Code (as adopted by the State of Texas), and the 2007 National Electric Safety Code, which allow for closer setbacks than the QAP's USF Rule. The City of Houston Electrical Code dictates that electrical facilities are to be located within easements, and CenterPoint Energy, builder of the HV Structures, advises that buildings should not be constructed within dedicated utility easements. The Project's Site Plan always complied with these local requirements.

Additionally, we point out there are residential communities in the immediate vicinity of the Development Site that are set much closer to the HV Structures than the Site Plan in the Application (see **Exhibit C**). 2400 Briarwest Apartments is just north of the proposed Development Site, with residential buildings mere feet from the fence line where HV Structures sit adjacent. On the other side of the HV Structures, to the immediate northwest of the proposed Development Site, is the Reflections Subdivision, which is comprised of three- and four-bedroom single family homes with average home values well over \$300,000. Several of these homes (even ones with pools) back up to the HV Structures closer than the buildings in the proposed Development Site, and the tennis courts are also closely adjacent to the HV Structures.

However, despite the numerous sources of mitigating information available to sufficiently justify the original Site Plan in the Application, none of them are necessary because a minor adjustment to the design has removed the buildings and recreational areas from the prohibited USF distance entirely. It would be in direct contradiction of the spirit of the USF Rule to favor the closer proximity established by local standards over meeting the requisite distance altogether when the latter can easily be accommodated with refinements so minimal in nature as to not even rise to the level of a non-material application amendment.

Conclusion:

The Application was incorrectly terminated and eligibility should have been considered resolved through the Administrative Deficiency process. The buildings and recreation areas were never intended to be located within the prohibited distance to the HV Structures. The remedy is a minor correction to the original Site Plan which resolves the inconsistencies in the Applications, as is appropriate in the Administrative Deficiency process. The nominally modified Site Plan, as Staff pointed out, has the appropriate distances. Accepting it fully precludes the need to disclose anything and completely remedies the USF issue – resulting in an eligible status pursuant to §11.101(a)(2)(D). The Board has repeatedly indicated its desire to move away from technical “gotchas” and avoid using the application process as a method of kicking out quality applications due to easily fixable mistakes. This situation is exactly that. It is important we stick with that framework here and allow the Administrative Deficiency process to be used in the manner intended to clear minor issues and move forward with an otherwise excellent application.

On behalf of the Applicant, we respectfully request that you consider the factors set out above, rescind the termination of this Application, and deem the matter previously resolved, thereby confirming the Development Site as eligible and reinstating the Application's position as a priority review project in Urban Region #6. Considering this is a “readiness to proceed” deal,

June 4, 2019

Page 6

undue delays should be avoided wherever possible. If the Executive Director should make a determination not in our favor, then we further request that the appeal be directed to the Board of Directors at its June Board meeting.

Very truly yours,

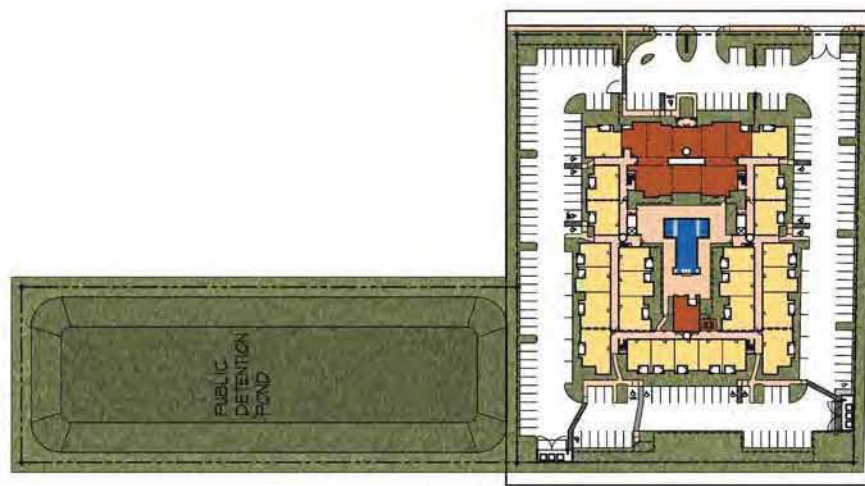
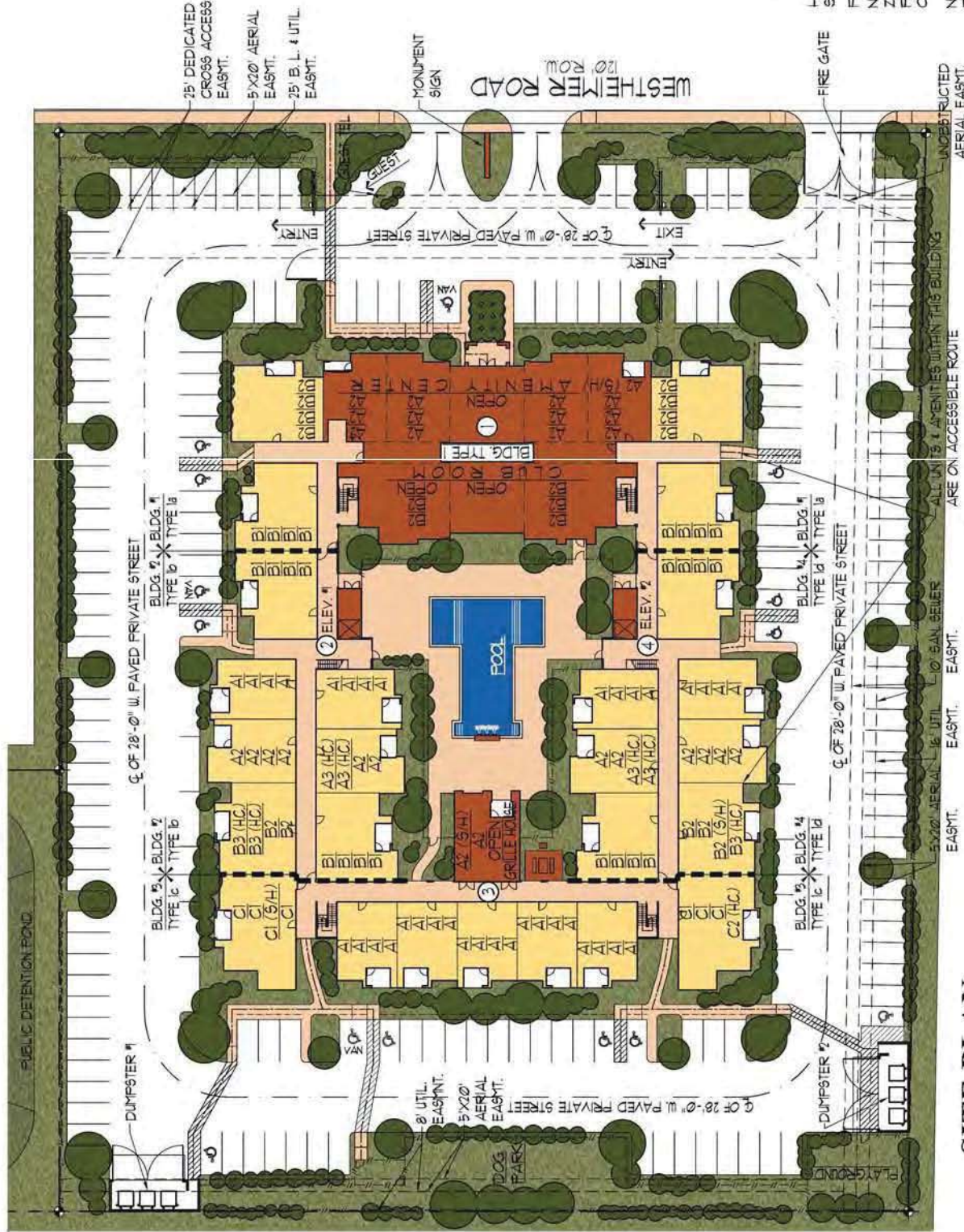


Andrea Hope J. Steel

Attachments

cc: Marni Holloway
Sharon Gamble
Nathan Kelley
Matt Fuqua

EXHIBIT A-1



KEY PLAN

H.C. INDICATES MOBILITY IMPAIRED UNIT
 S/H INDICATES SIGHT/HEARING IMPAIRED UNIT
 PROPERTY AREA: 5.39 ACRES
 NOTE: PROPERTY PARTIALLY WITHIN UNSHADED ZONE "X" (OUTSIDE 2% ANNUAL CHANCE FLOOD PLAIN) AND SHADED ZONE "AE" (WITHIN 2% ANNUAL CHANCE FLOOD PLAIN)
 NO FLOOD MITIGATION IS NEEDED FOR THIS PROPERTY. DETENTION IS PROVIDED BY EXISTING PUBLIC DETENTION POND.

SITE PLAN

The Briarwest

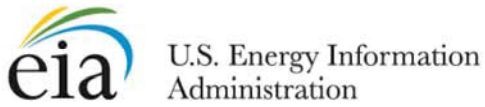
Mucasey & Associates, Architects



TDHCA Disclosure: In accordance with the rules of the Texas Department of Housing and Community Affairs, aspects of this development may be subject to change, including but not limited to, changes in the amenities ultimately selected and provided.

EXHIBIT B

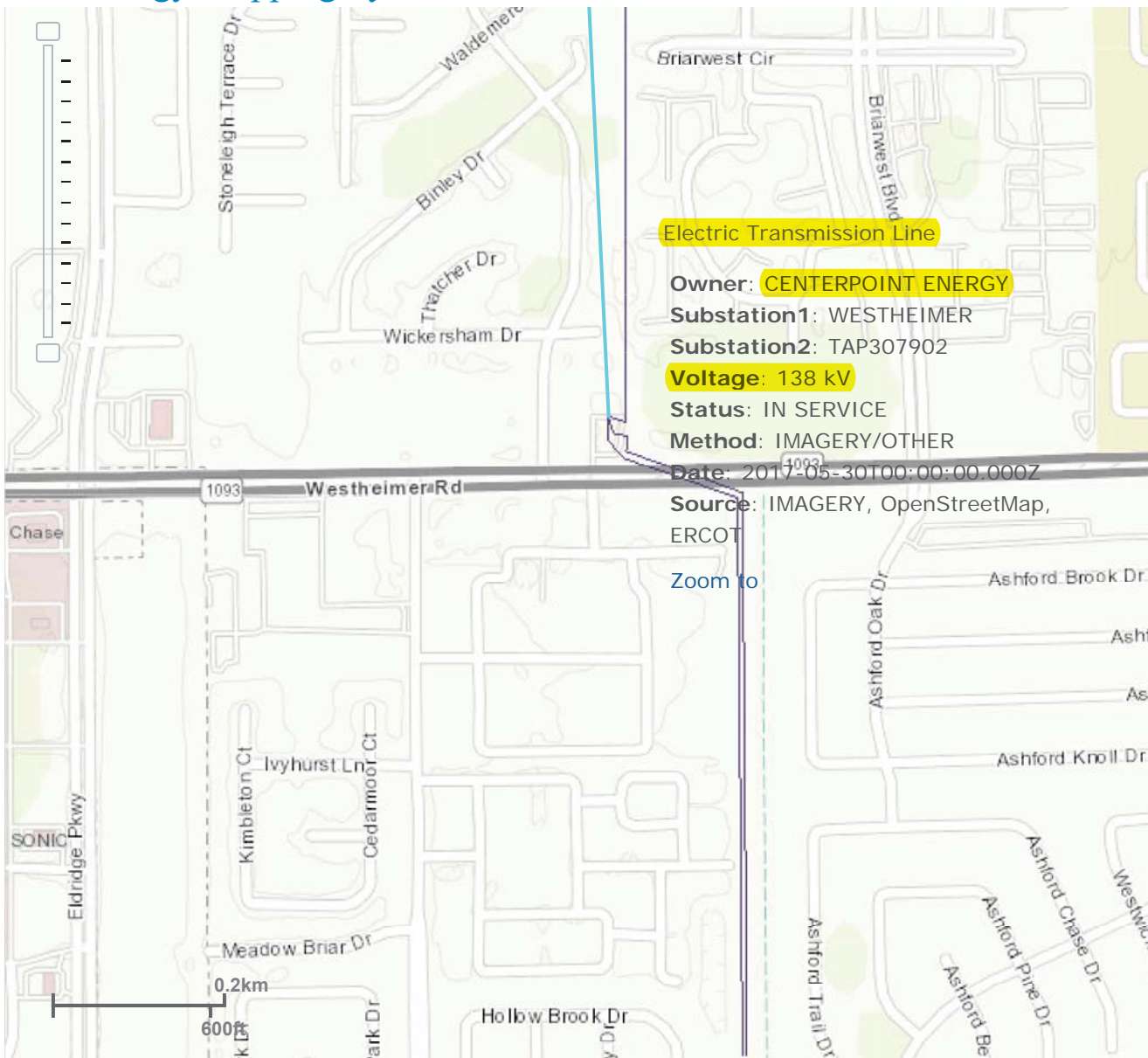
Evidence of Lower Distance Requirements



U.S. States 

State Profiles and Energy Estimates

Newly released in Beta: State Energy Portal featuring customizable dashboards and more state data.
U.S. Energy Mapping System



❖ Layer information and map data

Map questions, comments and suggestions: mapping@eia.gov

By Standard Number / 1926.1408 - Power line safety (up to 350 kV)--equipment operations.

- **Part Number:** 1926
 - **Part Number Title:** Safety and Health Regulations for Construction
 - **Subpart:** 1926 Subpart CC
 - **Subpart Title:** Cranes & Derricks in Construction
 - **Standard Number:** 1926.1408
 - **Title:** Power line safety (up to 350 kV)--equipment operations.
 - **GPO Source:** e-CFR
-

1926.1408(a)

Hazard assessments and precautions inside the work zone. Before beginning equipment operations, the employer must:

1926.1408(a)(1)

Identify the work zone by either:

1926.1408(a)(1)(i)

Demarcating boundaries (such as with flags, or a device such as a range limit device or range control warning device) and prohibiting the operator from operating the equipment past those boundaries, or

1926.1408(a)(1)(ii)

Defining the work zone as the area 360 degrees around the equipment, up to the equipment's maximum working radius.

1926.1408(a)(2)

Determine if any part of the equipment, load line or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone, could get closer than 20 feet to a power line. If so, the employer must meet the requirements in Option (1), Option (2), or Option (3) of this section, as follows:

1926.1408(a)(2)(i)

Option (1)--Deenergize and ground. Confirm from the utility owner/operator that the power line has been deenergized and visibly grounded at the worksite.

1926.1408(a)(2)(ii)

Option (2)--20 foot clearance. Ensure that no part of the equipment, load line, or load (including rigging and lifting accessories), gets closer than 20 feet to the power line by implementing the measures specified in paragraph (b) of this section.

1926.1408(a)(2)(iii)

Option (3)--Table A clearance.

1926.1408(a)(2)(iii)(A)

Determine the line's voltage and the minimum approach distance permitted under Table A (*see* § 1926.1408).

1926.1408(g)(1)(ii)

Power lines are presumed to be energized unless the utility owner/operator confirms that the power line has been and continues to be deenergized and visibly grounded at the worksite.

1926.1408(g)(1)(iii)

Power lines are presumed to be uninsulated unless the utility owner/operator or a registered engineer who is a qualified person with respect to electrical power transmission and distribution confirms that a line is insulated.

1926.1408(g)(1)(iv)

The limitations of an insulating link/device, proximity alarm, and range control (and similar) device, if used.

1926.1408(g)(1)(v)

The procedures to be followed to properly ground equipment and the limitations of grounding.

1926.1408(g)(2)

Employees working as dedicated spotters must be trained to enable them to effectively perform their task, including training on the applicable requirements of this section.

1926.1408(g)(3)

Training under this section must be administered in accordance with § 1926.1430(g).

1926.1408(h)

Devices originally designed by the manufacturer for use as: A safety device (*see* § 1926.1415), operational aid, or a means to prevent power line contact or electrocution, when used to comply with this section, must meet the manufacturer's procedures for use and conditions of use.

TABLE A—MINIMUM CLEARANCE DISTANCES

Voltage (nominal, kV, alternating current)	Minimum clearance distance (feet)
up to 50	10
over 50 to 200	15
over 200 to 350	20
over 350 to 500	25
over 500 to 750	35
over 750 to 1,000	45
over 1,000	(as established by the utility owner/operator or registered professional engineer who is a qualified person with respect to electrical power transmission and distribution).

Note: The value that follows "to" is up to and includes that value. For example, over 50 to 200 means up to and including 200kV.

[75 FR 48142, August 9, 2010]

UNITED STATES
DEPARTMENT OF LABOR

HEALTH AND SAFETY CODE

TITLE 9. SAFETY

SUBTITLE A. PUBLIC SAFETY

CHAPTER 752. HIGH VOLTAGE OVERHEAD LINES

Sec. 752.001. DEFINITIONS. In this chapter:

(1) "High voltage" means more than 600 volts measured between conductors or between a conductor and the ground.

(2) "Overhead line" means a bare or insulated electrical conductor installed above ground but does not include a conductor that is de-energized and grounded or that is enclosed in a rigid metallic conduit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.002. EXEMPTION FOR CERTAIN EMPLOYEES AND ACTIVITIES.

(a) This chapter does not apply to the construction, reconstruction, operation, or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment that are part of a rail transportation system, an electrical generating, transmission, or distribution system, or a communication system.

(b) In this section, "authorized person" means:

(1) an employee of a light and power company, an electric cooperative, or a municipality working on his employer's electrical system;

(2) an employee of a transportation system working on the system's electrical circuits;

(3) an employee of a communication utility;

(4) an employee of a state, county, or municipal agency that has authorized circuit construction on the poles or structures that belong to an electric power company, an electric cooperative, a municipal or transportation system, or a communication system;

(5) an employee of an industrial plant who works on the plant's electrical system; or

(6) an employee of an electrical or communications contractor who is working under the contractor's supervision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.003. TEMPORARY CLEARANCE OF LINES. (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function closer to a high voltage overhead line than the distances prescribed by this chapter must notify the operator of the line at least 48 hours before the work begins.

(b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity, or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.

(c) The person, firm, corporation, or association responsible for the work, activity, or function shall pay the operator of the high voltage overhead line the actual expense incurred by the operator in providing the clearance prescribed in the agreement. The operator may require payment in advance and is not required to provide the clearance until the person, firm, corporation, or association responsible for the work, activity, or function makes the payment.

(d) If the actual expense of providing the clearance is less than the amount paid, the operator of the high voltage overhead line shall refund the surplus amount.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.004. RESTRICTION ON ACTIVITIES NEAR LINES. (a) Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section [752.003](#), the person, firm, corporation, or association,

either individually or through an agent or employee, may not perform a function or activity on land, a building, a highway, or other premises if at any time it is possible that the person performing the function or activity may:

(1) move or be placed within six feet of a high voltage overhead line while performing the function or activity; or

(2) bring any part of a tool, equipment, machine, or material within six feet of a high voltage overhead line while performing the function or activity.

(b) A person, firm, corporation, or association may not require an employee to perform a function or activity prohibited by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.005. RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES. Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not:

(1) erect, install, transport, or store all or any part of a house, building, or other structure within six feet of a high voltage overhead line;

(2) install, operate, transport, handle, or store all or any part of a tool, machine, or equipment within six feet of a high voltage overhead line; or

(3) transport, handle, or store all or any part of supplies or materials within six feet of a high voltage overhead line.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.007. CRIMINAL PENALTY. (a) A person, firm, corporation, or association or an agent or employee of a person, firm, corporation, or association commits an offense if the person, firm, corporation, association, agent, or employee violates this chapter.

(b) An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, confinement in jail for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.008. LIABILITY FOR DAMAGES. If a violation of this chapter results in physical or electrical contact with a high voltage overhead line, the person, firm, corporation, or association that committed the violation is liable to the owner or operator of the line for all damages to the facilities and for all liability that the owner or operator incurs as a result of the contact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.



HOUSTON CODE ADOPTION HISTORY

DOCUMENT TITLE ¹	VOLUMES	BASE CODE	ORDINANCE ⁸	EFFECTIVE ⁸	SUPERSEDED ⁸
BUILDING CODES					
1942 Houston Building Code NOTE: The list of ordinances identified may not be the complete list of ordinances applicable to the 1942 City Code of Ordinances.	1	1942 City Code (Chapter 52. Building Code w/revisions through 1962)	*1942-0361 R1-1947-1586 R2-1948-2819 R3-1948-2885 R4-1948-2998 R5-1948-3157 R6-1948-3243 R7-1948-3344 R8-1949-3484 R9-1949-3734 R10-1949-4109 R11-1949-4345 R12-1949-4511 R13-1950-4802 R14-1950-5220 R15-1950-5362 R16-1951-6119 R17-1951-6586 R18-1951-6623 R19-1952-8191 R20-1953-8648 R21-1953-9134 R22-1953-9624 R23-1954-0399 R24-1954-0400 R25-1956-2290 R26-1956-2291 R27-1956-2292 R28-1956-2399	*04/29/1946 R1-06/04/1947 R2-07/28/1948 R3-08/11/1948 R4-09/15/1948 R5-10/27/1948 R6-11/24/1948 R7-12/22/1948 R8-02/16/1949 R9-04/27/1949 R10-08/03/1949 R11-10/05/1949 R12-12/07/1949 R13-03/22/1950 R14-07/12/1950 R15-08/16/1950 R16-04/18/1951 R17-09/12/1951 R18-09/18/1951 R19-10/29/1952 R20-04/15/1953 R21-08/19/1953 R22-12/30/1953 R23-08/04/1954 R24-08/04/1954 R25-03/07/1956 R26-03/07/1956 R27-03/07/1956 R28-04/04/1956	R1-06/04/1947 R2-07/28/1948 R3-08/11/1948 R4-09/15/1948 R5-10/27/1948 R6-11/24/1948 R7-12/22/1948 R8-02/16/1949 R9-04/27/1949 R10-08/03/1949 R11-10/05/1949 R12-12/07/1949 R13-03/22/1950 R14-07/12/1950 R15-08/16/1950 R16-04/18/1951 R17-09/12/1951 R18-09/18/1951 R19-10/29/1952 R20-04/15/1953 R21-08/19/1953 R22-12/30/1953 R23-08/04/1954 R24-08/04/1954 R25-03/07/1956 R26-03/07/1956 R27-03/07/1956 R28-04/04/1956 10/01/1958
1958 Houston Building Code	1	1958 UBC	*1957-1469 R1-1958-0285 R2-1958-0296 R3-1958-0679 R4-1958-1145 R5-1959-0151 R6-1959-0702 R7-1960-0511 R8-1960-1133 R9-1962-0351	*10/01/1958 R1-04/22/1958 R2-04/23/1958 R3-06/26/1958 R4-10/21/1958 R5-02/10/1959 R6-05/27/1959 R7-04/13/1960 R8-07/19/1960 R9-02/28/1962	R1-04/22/1958 R2-04/23/1958 R3-06/26/1958 R4-10/21/1958 R5-02/10/1959 R6-05/27/1959 R7-04/13/1960 R8-07/19/1960 R9-02/28/1962 03/25/1963
1963 Houston Building Code	1	1963 UBC	*1963-0392 Supplement 1 R1-1963-0547 R2-1963-0559 R3-1963-0679 R4-1963-1031 R5-1963-1221 R6-1963-1222 R7-1963-1223 R8-1963-1261 R9-1963-1315 R10-1963-1316 R11-1963-1463 R12-1963-1680 R13-1963-1684 R14-1963-1875 R15-1963-1946 R16-1963-1947 R17-1963-1948	*03/25/1963 Supplement 1 R1-04/17/1963 R2-04/24/1963 R3-05/21/1963 R4-07/23/1963 R5-08/28/1963 R6-08/28/1963 R7-08/28/1963 R8-09/02/1963 R9-09/10/1963 R10-09/10/1963 R11-10/01/1963 R12-10/30/1963 R13-11/05/1963 R14-11/19/1963 R15-12/17/1963 R16-12/17/1963 R17-12/17/1963	Supplement 1 R1-04/17/1963 R2-04/24/1963 R3-05/21/1963 R4-07/23/1963 R5-08/28/1963 R6-08/28/1963 R7-08/28/1963 R8-09/02/1963 R9-09/10/1963 R10-09/10/1963 R11-10/01/1963 R12-10/30/1963 R13-11/05/1963 R14-11/19/1963 R15-12/17/1963 R16-12/17/1963 R17-12/17/1963
Cont...	Cont...	Cont...	Cont...	Cont...	Cont...

2002 Houston Electrical Code	1	NFPA 70-2002 NEC ² , 2002 NESC (ANSI C2-2002) ³	*2002-0399 R1-2002-0625 R2-2003-0645 R3-2004-0884 R4-2004-1015 R5-2004-1065 R6-2005-0635	*07/14/2002 R1-07/14/2002 R2-01/12/2004 R3-09/01/2004 R4-09/29/2004 R5-10/13/2004 R6-05/18/2005	R1-07/14/2002 R2-01/12/2004 R3-09/01/2004 R4-09/29/2004 R5-10/13/2004 R6-05/18/2005 01/04/2006
2005 Houston Electrical Code	1	NFPA 70-2005 NEC ² , 2007 NESC (ANSI C2-2007) ³	*2005-0943	*08/03/2005	09/01/2008
2008 Houston Electrical Code	1	NFPA 70-2008 NEC ² , 2007 NESC (ANSI C2-2007) ³	*2008-0706 R1-2009-0721 R2-2010-0847 R3-2010-1016 R4-2011-0656	*09/01/2008 R1-09/04/2009 R2-12/31/2010 R3-12/31/2010 R4-09/02/2011	R1-09/04/2009 R2-12/31/2010 R3-12/31/2010 R4-09/02/2011 09/1/2011
2011 Houston Electrical Code	1	NFPA 70-2011 NEC ² , 2007 NESC (ANSI C2-2007) ³	*2011-0673 R1-2011-1087 R2-2011-1213 R3-2013-0252	*09/01/2011 R1-01/01/2012 R2-12/21/2011 R3-04/26/2013	R1-01/01/2012 R2-12/21/2011 R3-04/26/2013 09/24/2014
2014 Houston Electrical Code	1	NFPA 70-2014 NEC ² , 2007 NESC (ANSI C2-2007) ³	*2014-0876	*09/24/2014	09/15/2017
2017 National Electrical Code ⁵	2	NFPA 70-2017 NEC ² , 2007 NESC (ANSI C2-2007) ³	State Adopted Minimum ⁵	09/15/2014	Current
DOCUMENT TITLE¹	VOLUMES	BASE CODE	ORDINANCE⁸	EFFECTIVE⁸	SUPERSEDED⁸
FIRE CODES					
1942 Houston Fire Code	1	1942 City Code of Ordinances	*1942-0361 R1-1953-8941 R2-1954-0560 R3-1958-0275 R4-1963-0899 R5-1966-0168 R6-1969-1207 R7-1971-1390	*12/31/1942 R1-06/24/1953 R2-09/15/1954 R3-04/16/1958 R4-07/02/1963 R5-02/02/1966 R6-07/02/1969 R7-08/03/1971	R1-06/24/1953 R2-09/15/1954 R3-04/16/1958 R4-07/02/1963 R5-02/02/1966 R6-07/02/1969 R7-08/03/1971 11/21/1973
1973 Houston Fire Code	3	1973 Houston Fire Code The following publications are hereby adopted by reference: (1) National Fire Protection Association Pamphlet No. 45, 1975 edition. (2) National Fire Protection Association (N.F.P.A.) Pamphlet No. 495, 1973 edition, referred to in N.F.P.A. Pamphlet No. 45, 1975 edition. (Ord. No. 1983-0609, § 15, 04-26-1983)	*1973-2078 R1-1973-2978 R2-1973-9078 R3-1974-0004 R4-1974-0352 R5-1974-0682 R6-1975-2015 R7-1975-2038 R8-1976-0103 R9-1976-0381 R10-1976-0382 R11-1976-0383 R12-1976-0384 R13-1976-0385 R14-1976-0386 R15-1976-0435 R16-1976-0672 R17-1976-0674 R18-1976-0675 R19-1976-0676 R20-1976-0979 R21-1976-1438 R22-1976-1991 R23-1976-2167 R24-1977-1687 R25-1978-0955 R26-1978-1371 R27-1978-2134 R28-1979-2130	*11/21/1973 R1-11/21/1973 R2-11/21/1973 R3-01/02/1974 R4-02/20/1974 R5-04/17/1974 R6-11/06/1975 R7-11/11/2075 R8-01/27/1976 R9-03/09/1976 R10-03/09/1976 R11-03/09/1976 R12-03/09/1976 R13-03/09/1976 R14-03/09/1976 R15-03/23/1976 R16-04/20/1976 R17-04/20/1976 R18-04/20/1976 R19-04/20/1976 R20-06/15/1976 R21-08/25/1976 R22-11/18/1979 R23-12/14/1976 R24-08/31/1977 R25-05/10/1978 R26-07/11/1978 R27-10/31/1978 R28-12/04/1979	R1-11/21/1973 R2-11/21/1973 R3-01/02/1974 R4-02/20/1974 R5-04/17/1974 R6-11/06/1975 R7-11/11/2075 R8-01/27/1976 R9-03/09/1976 R10-03/09/1976 R11-03/09/1976 R12-03/09/1976 R13-03/09/1976 R14-03/09/1976 R15-03/23/1976 R16-04/20/1976 R17-04/20/1976 R18-04/20/1976 R19-04/20/1976 R20-06/15/1976 R21-08/25/1976 R22-11/18/1979 R23-12/14/1976 R24-08/31/1977 R25-05/10/1978 R26-07/11/1978 R27-10/31/1978 R28-12/04/1979
Cont...	Cont...	Cont...	Cont...	Cont...	Cont...

2012 Houston Residential Code	1	2012 IRC	*2015-1108 R1-2015-1289 R2-2015-1316	*01/01/2016 R1-02/01/2016 R2-02/01/2016	R1-02/01/2016 R2-02/01/2016 Current
DOCUMENT TITLE ¹	VOLUMES	BASE CODE	ORDINANCE ⁸	EFFECTIVE ⁸	SUPERSEDED ⁸
ENERGY CODES					
2001 Houston Residential Energy Code	1	2000 IECC Residential Provisions, with 2001 Supplement	*2002-0801 R1-2004-1015	*09/01/2002 R1-09/29/2004	R1-09/29/2004 01/01/2009
2001 Houston Commercial Energy Code	1	2000 IECC Commercial Provisions, with 2001 Supplement	*2002-0801 R1-2004-1015	*09/01/2002 R1-09/29/2004	*R1-09/29/2004 08/01/2008
2008 Houston Commercial Energy Code	1	2006 IECC Commercial Provisions or ASHRAE 90.1-2004	*2008-0383 R1-2008-0705 R2-2009-0905 R3-2009-1051 R4-2010-0847	*08/01/2008 R1-08/13/2008 R2-09/30/2009 R3-11/04/2009 R4-12/31/2010	R1-08/13/2008 R2-09/30/2009 R3-11/04/2009 R4-12/31/2010 09/02/2012
2006 Houston Residential Energy Code	1	2006 IECC Residential Provisions	*2008-1049 R1-2009-0905	*01/01/2009 R1-09/30/2009	R1-09/30/2009 01/06/2012
2009 Houston Commercial Energy Code	1	2009 IECC Commercial Provisions or ASHRAE 90.1-2007	*2011-0656 R1-2011-1087	*09/02/2011 R1-01/01/2012	R1-01/01/2012 11/01/2016
2009 Houston Residential Energy Code	1	2009 IECC Residential Provisions	*2011-1087	*09/02/2012	09/01/2016
2015 Houston Residential Energy Code ⁶	1	2015 IECC Residential Provisions	*2016-0718	*10/21/2016 ⁶	Current
2015 Houston Commercial Energy Code ⁷	1	2015 IECC Commercial Provisions or ASHRAE 90.1-2013	*2016-0865	*12/09/2016 ⁷	Current

NOTE: Original adopting ordinance and effective date.

Footnotes:

- 1 Houston in the document title indicates the adopted version, including local amendments.
- 2 National Fire Protection Association (NFPA) 70 National Electrical Code (NEC),
- 3 National Electrical Safety Code (NESC) American National Standards Institutes (ANSI),
- 4 National Fire Protection Association (NFPA) Lighting Protection Code (LPC) Pamphlet
- 5 Any non-exempt electrical work started on or after September 15, 2017 will have to be installed in accordance with the Texas mandated minimum 2017 NEC. Currently the City of Houston enforces the 2017 NEC with the 2014 edition of the Houston Administrative Provisions.
- 6 The enforcement of the energy efficiency provisions of Chapter 11 of the 2015 International Residential Code became mandatory by state law effective 09/01/2016.
- 7 The enforcement of the energy efficiency provisions of the 2015 IECC-Commercial provisions became mandatory by state law effective 11/01/2016.
- 8 Ordinances revising adopted codes are represented by the letter "R" along with an appropriate revision number for that specific code change. The code revisions include the ordinance number and its correlating effective date. Example: "R1-2009-0905 and R1-09/30/2009" refers to "Revising Ordinance #1-2009-0905" with an effective date of "09/30/2009". The revising ordinances include modifications to specific code provisions that change the originally adopted code.

NOTE: Although an exhaustive search was conducted to identify the adopted ordinances and subsequent revising ordinances applicable to the Houston Construction Code, the ordinances identified above may not be the complete list of ordinances applicable to the referenced codes. From time to time the list of ordinances identified herein may change to included ordinances found to be inadvertently excluded from this document.

CITY OF HOUSTON
ELECTRICAL CODE



2014 ADMINISTRATIVE
CODE PROVISIONS
for the
NATIONAL ELECTRICAL CODE

Adopted by Ord. No. 2014-876

Effective September 24, 2014

Chapter 5 BUILDING STANDARDS

SECTION 501—WIRING SYSTEMS

501.1 General. Any type of wiring or wiring systems may be used in the city as approved in the *National Electrical Code* adopted in Section 502, except where specifically provided herein.

Refer to Section 403 of the *Building Code* for high-rise building requirements and to Chapter 46 of the *Building Code* for the Sign Code.

501.2 Electric Utility Company. All changes in the service standards and area practices that are promulgated by the electric utility company shall be submitted to the Electrical Board for review and comment at least 30 calendar days prior to enactment.

For the purposes of this code, the distribution system of any electric, telephone, telegraph, signal and/or electric utility company shall not extend to any electrical apparatus or equipment that the company does not own or control.

If a licensed or registered contractor needs access to metering and service equipment under control of an electric utility company to perform certain electrical work, the electric utility company must unlock and/or make accessible all metering and service equipment within four hours of the time the contractor requests the action, if possible. Licensed or registered contractors may access metering and service equipment.

SECTION 502—ADOPTED STANDARDS

The following codes, pamphlets and specifications are hereby adopted, authentic copies of which are filed with the City Secretary as part of this code, and shall govern and be observed and followed in all electrical wiring and in the construction, installation, repair, alteration, operation and maintenance of electrical wiring apparatus or fixtures:

(1) The *National Fire Protection Association Pamphlet No. 70, National Electrical Code, 2014 Edition.*

(2) The *2012 National Electrical Safety Code.* When the provisions of the *National Electrical Safety Code* and the *National Electrical Code* are in conflict, the *National Electrical Code* shall prevail.

In case of conflict between the provisions of the standards listed in the above paragraphs and the provisions of this code, the provisions of this code shall prevail.

SECTION 503—METERS

503.1 General. The meter cabinets and electrical metering equipment through which service is rendered by the electric utility company to domestic establishments and buildings combining domestic establishments with commercial or industrial usage shall be installed where readily accessible on the exterior of the building. Fireproof meter cabinets or meters sockets shall be approved by the electric utility company and installed by the master electrician performing the work, said meter cabinets to be located so the center of the opening of the meter dial shall not be less than 5 feet (1524 mm) nor more than 6 feet (1829 mm) above mean ground level so that the cabinet is readily accessible to the electric utility company for service. On apartment buildings, where space limitations will not permit placing all

SECTION 506—CONDUIT

Electrical metallic tubing (EMT) shall not be buried in ground or embedded in concrete supported by earth. Flexible or pliable raceways shall be used only for temporary work, branch circuits, and for permanent connections to vibrating, rotating and movable equipment and fixtures.

SECTION 507—TEMPORARY SAW POLES

Temporary saw poles shall be constructed of weatherproof electrical materials consisting of a minimum of 60-ampere switch or circuit breaker panel and grounded receptacle mounted on at least a solid 4-inch by 4-inch (102 mm by 102 mm) timber or equivalent wood structure. Service conductors shall be 6 AWG or larger installed in conduit.

SECTION 508—ELECTRICAL MATERIAL AND EQUIPMENT

No electrical materials, apparatus, devices, appliances, fixtures, or equipment shall be sold or installed in the city unless they are in conformance with the provisions of this code, the laws of the State of Texas and any applicable rules and regulations issued under the authority of the state statutes.

The maker's name, trademark, or other identification symbol shall be placed on all electrical materials, apparatus, devices, appliances, fixtures, and equipment used or installed under the provisions of this code.

All electrical materials and equipment shall be listed and labeled for intended use and shall be included in a list published by an approved agency.

EXCEPTION: Proton therapy equipment, when in its experimental stage.

SECTION 509—ELECTRICAL FENCES

This code does not regulate electrically charged fences installed in accordance with Section 28-10 of the *City Code*.

SECTION 510—LOCATION

510.1 Except as otherwise provided in this Code, no electrical system, or part thereof, shall be located in any lot other than the lot that is the site of the building, structure, or premises served by such facilities unless the electrical system, or part thereof, is located in an easement.

SECTION 511—TAMPER RESISTANT RECEPTACLES

511.1 When tamper-resistant receptacles are required by this code, they will not be required when the building is wired with aluminum wiring.

SECTION 512 – SWIMMING POOLS

512.1 Swimming pools. Equipment or lighting over 50 volts shall not be installed in newly constructed swimming pools.



[Sign In / Register](#)

Electric Service FAQs

Manage Your Electric Account:

[Where can I find my electric bill?](#)

[View Electric Usage](#)

[Get Power Outage Alerts](#)

[Add Authorized Users](#)

[Customize Your Communications](#)

Starting New Electric Service:

[How do I get my electric service turned on for a home or building I just bought that has had electric service before?](#)

[How do I request electric service for my new home or building where no service has been present previously?](#)

[Who do I contact to get a permit?](#)

[How do I get an address?](#)

[Where do I put my pole to get service?](#)

[Can I have two meters on my property?](#)

[What information do I need to provide to the Service Consultant to start electrical service discussions?](#)

[Can I be billed for the cost of CenterPoint Energy's construction to serve my building or project?](#)

Temporary Service Disconnection/Reconnection:

How do I schedule a temporary disconnect?

I need to replace/upgrade my meter service, how do I request an outage to do the work?

Clearance Inquiries:

How close to an electric line can I build a new building or structure on my property? Who should I call to find out?

A: CenterPoint Energy builds power lines to comply with the National Electrical Safety Code requirements for permanent clearances between power lines and the existing structures or surfaces at the time the power line is installed. For new construction, the required permanent clearance will depend on the then-current National Electrical Safety Code and the type of structure being built.

Building too close to power lines reduces the permanent clearance and can create safety hazards for workers or occupants of the structure. Federal OSHA law and Texas state law (Chapter 752 of the Texas Health and Safety Act) require workers and others to maintain certain distances ("working clearance") from power lines at all times. Consistent with OSHA law, stay at least 10 feet away from high voltage power lines. In addition, no building or structure should be constructed in a dedicated utility easement (ground or aerial). If you anticipate working within 10 feet of high voltage power lines or have any further questions, please contact CenterPoint Energy Customer Service and ask to speak with your Service Consultant in advance of starting the work to discuss arrangements for making the work site safe.

What should I do if I want to build a pool or hot tub?

Security Lighting:

How do I request a security light?

Can I install my own light or security camera on CenterPoint Energy facilities?

EXHIBIT C - Adjacent Residences



Reflections Subdivision

Transmission Towers

Development Site

2400 Briarwest Apartments

TDHCA Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

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Leslie Bingham-Escareño, *Vice Chair*
Paul A. Braden, Member
Asusena Reséndiz, Member
Sharon Thomason, Member
Leo Vasquez, Member

June 17, 2019

Writer's direct dial: 512/475-1676
Email: david.cervantes@tdhca.state.tx.us

Andrea Hope J. Steel
Coats Rose
9 Greenway Plaza, Ste. 1000
Houston, TX 77046

RE: APPEAL OF TERMINATION OF 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19307 BRIARWEST APARTMENTS, HOUSTON

Dear Ms. Steel:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your appeal, dated June 4, 2019, regarding the application submission indicated above. Staff had determined that the Application did not disclose the Development's proximity to a high voltage transmission line, as required by 10 TAC §11.101(a)(2) related to Undesirable Site Features. Per the rule:

Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility.

(D) Development Sites in which any of the buildings or designated recreational areas (including pools) are to be located within 100 feet of the nearest line or structural element of any overhead high voltage transmission line, support structures for high voltage transmission lines, or other similar structures. This does not apply to local service electric lines and poles;

The appeal states that 10 TAC §11.101(a)(2) related to Undesirable Site Features (USF) does not require the Applicant to disclose a USF. The appeal states that the only place this issue is raised is "in the Application itself, as part of the Owner Certification." The appeal asserts that where the application requires the Development Owner to certify that "the Development **is not** located in an area with undesirable site features as further described in §11.101(a)(2) of the Qualified Allocation Plan" (emphasis in original), the Development Owner is not certifying fact but "intention," so the selection that states that



“the proposed Development is located in an area with an undesirable site feature and mitigation to be considered by staff and the Board is included in the Application” is only applicable if the Development Owner intends for it to be so. The appeal argument then concludes that “[t]he Application did not disclose an inability to meet the threshold requirement of 100’ from any HV structure because the buildings were never intended to be located within 100’ of the HV structures.”

I will note that this logic departs dramatically from the Applicant’s response to the RFAD a month ago, wherein the Applicant appeared to readily acknowledge the development site’s close proximity to overhead power transmission lines and a power substation, but had concluded that they were not “high voltage” and did not need to be disclosed in the Application. As to the Applicant’s current argument that its “intention” was not to develop the site within 100 feet of the various high voltage structures immediately adjacent to the Development Site, the Department relies on the materials submitted with the application. Here, the Applicant submitted a site plan that would clearly demonstrate its proximity to an undesirable site feature if the Applicant had actually mentioned it in its Application. Therein lies the problem: the Applicant submitted an application to develop a site in a way that would require disclosing its proximity to high voltage lines and discussing mitigation, and did not. Indeed, but for a third party pointing out what the Application had not (that a power substation is next to the property and high voltage power lines run along two of the four boundary lines of the development site) one would presume the property would have been developed as proposed in the Application if it received an award. After all, a month ago they had been presumed by the Applicant to have been local power transmission lines.

This is why addressing undesirable site features in the application is a required and material element of the application, and why, when it is missing from the application, it is a material deficiency rather than an administrative deficiency. Otherwise, there would be no incentive to address an undesirable site feature in the application – an applicant could (intentionally or negligently) withhold the unfavorable information from the application, but seek to mitigate it if they got caught.

The appeal asserts that because certain USF rules allow for measurement to the feature to be to the residential building instead of to the Development Site boundary, the rules “Inherently allow for flexibility of site design as an opportunity to avoid ineligibility.” The appeal then admits that the Application as submitted did not meet the requirements of the rules and that the Development Site Plan was changed to bring the Development into compliance, “completely obviating the need to provide any mitigating information or seek a Board determination of Site eligibility.” But 10 TAC §11.101(a)(2) requires that the Board be provided “information regarding mitigation of the applicable undesirable site feature(s)” sufficient to support Site eligibility. The Applicant was required to state that one or more of the USFs exists within the stated proximity and that there are mitigating factors that may make the Development Site eligible. None of this information was included in the Application. And the ease by which the site plan could have avoided a conflict with the QAP is immaterial to this analysis. The time to have submitted a site plan that avoided proximity to a USF was with the Application submitted, rather than three months later.

Lastly, the Development Owner Certification is not just a form in the Application. Requirements for the certification are found in 10 TAC §11.204(1), which states:

Certification, Acknowledgement and Consent of Development Owner. A certification of the information in this subchapter as well as Subchapter B of this chapter must be executed by the Development Owner and addresses the specific requirements associated with the Development. The Person executing the certification is responsible for ensuring

all individuals referenced therein are in compliance with the certification and that they have given it with all required authority and with actual knowledge of the matters certified.

Subchapter C relates to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules. "Subchapter B of this chapter" relates to Site and Development Requirements and Restrictions and is the subchapter that includes Undesirable Site Features. The appeal's assertion that the certification seeks the Applicant's intentions instead of the Application's facts, and presumes flexibility in meeting the requirement, trivializes the importance of what applicants are certifying to this Board about the nature and details of their application.

I do not find that the issues raised in your appeal clearly demonstrate that the Application should not have been terminated, and accordingly I must deny the appeal. If you are not satisfied with this decision, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instruction on the appeals process. Please note that §11.902(f) of the 2019 QAP and Tex. Gov't Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,

A handwritten signature in black ink, appearing to read "David Cervantes", with a stylized flourish extending to the right.

David Cervantes
Acting Director

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on timely filed appeal of HTC Application 19368, Sweetwater Springs

RECOMMENDED ACTION

WHEREAS, the appeal relates to Competitive Housing Tax Credit (HTC) application 19368, Sweetwater Springs, which was submitted to the Department by the Full Application Delivery Date;

WHEREAS, staff determined that the Applicant did not have an agreement with the City of Sweetwater with regard to development on, or ingress and egress access to, Coke Street, prior to submission of the Application; and that the amendment to the purchase and sale contract was between the Applicant and the Seller of the private property and not with the City of Sweetwater, which is the entity that must agree to have the LURA extend to the Coke Street easement;

WHEREAS, the Application was recommended for termination due to the Applicant's inability to provide documentation that existed prior to submission of the Application to meet threshold requirements, subject to the Applicant's ability to appeal;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Acting Director denied the appeal;

NOW, therefore, it is hereby

RESOLVED, that the appeal for 19368, Sweetwater Springs is hereby denied and the application is terminated.

BACKGROUND

10 TAC §11.204 (the Rule), related to Required Documentation for Application Submission, identifies the documentation that is required at the time of Application submission, unless specifically indicated or otherwise required by Department rule. It includes those items required under Tex. Gov't Code, Chapter 2306 (Statute), §42 of the Internal Revenue Code (the Code), and other criteria established in a manner consistent with Chapter 2306 and §42 of the Code. The Rule creates the format for information required by Statute and Code, and information necessary to evaluate and underwrite the Application.

The Application proposes the New Construction of 48 units for a general population in Sweetwater.

The property that is the subject of the Application had been platted by the City of Sweetwater as two blocks of single family residential lots, with a planned street (“Coke Street”) running between the two halves of the property. The City of Sweetwater owns the Coke Street land and the Right of Way to develop it as a street, and though the Application clearly proposes developing a single, continuous site that includes the two residential blocks and the Coke Street area of land between them, the purchase and sale contract for the land to develop the property did not include the Coke Street land. In short, the Application did not address the transfer of ownership or interest in land from the City of Sweetwater that is at the heart of the proposed development. This raises a fundamental site control issue under 10 TAC 11.101(10)(B), and a related easement issue under 10 TAC 11.101(10)(D) for the ingress and egress to the property via the Coke Street portion of the proposed development.

The appeal states:

“In accordance with §11.204(10), the Department requested the easement documentation from the Applicant through a deficiency and the Applicant submitted the required information to the Department promptly. The rule does not state such documentation must be dated prior to March 1st, it merely states that the documentation must be submitted promptly when requested.”

The Department’s rules do address the requirement for the existence of documentation prior to submission of the Application. Per 10 TAC §11.1(d)(78) related to Material Deficiency:

(78) Material Deficiency--Any deficiency in a Pre-Application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. (emphasis added)

Per 10 TAC §11.201(7) related to Deficiency Process:

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department’s request missing information (that should already been in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. (emphasis added)

The Applicant submitted a contract amendment, dated April 14, 2019, and a letter and temporary access easement agreement from the City of Sweetwater dated April 15, 2019. The appeal does not address the absence of site control documentation in the Application from the City of Sweetwater to address the Coke Street area of land. The later-submitted amendment to the purchase and sale contract is between the Applicant and the Seller of the private property, and not with the City of Sweetwater, which is the entity that needed to have agreed that the Coke Street land could be used as it is proposed in the Application, and must agree to have the land use restriction agreement (LURA) extend to the Coke Street easement. Moreover, a temporary,

non-exclusive access easement to the Coke Street land does not satisfy the site control requirements of 10 TAC 11.101(10)(B), as it is neither a deed vesting indefeasible title, a contract or option for lease for a minimum of 45 years, nor a contract for sale or purchase of the land.

Staff recommends the Board deny the appeal.

19368

Sweetwater Springs
Deficiency Documents



Arx Advantage, LLC

Robbye G. Meyer
1305 Dusky Thrush Trail
Austin, Texas 78746
(512) 963-2555
robbye@arxadvantage.net

April 15, 2019

Ms. Liz Cline
Multifamily Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Dear Ms. Cline,

We are in receipt of the deficiency notice issued April 1, 2019 for 19368 Sweetwater Springs Apartments and have responded to those requests in the following response.

1. Site Information Form Part I: The flood zone designation stated on the exhibit does not agree with the ESA report or site plan.

The form has been corrected to indicate the site is partially in a floodplain. The applicant is working to get a current LOMR on the property to correct the floodplain issue.

2. Site Information Form Part III: The form is incomplete. The acreage is not stated for the site plan and the date of the last sale are blank. Please complete all sections of the form.

The form has been revised to include the information that was omitted.

3. Site Control: Coke Street is not included in the site control but appears to be part of the site according to the site plan. Provide evidence that Coke Street is included in the site control or provide evidence that there is an agreement with regard to development on the portion not included in site control.

The applicant contacted the city to vacate the plat for Coke Street and it is anticipated that the plat will be vacated as the city completed the same type vacation of land to a property owner just 6 months ago. However, the Site Plan was design so that if the city does not vacate the plat for Coke Street, the street can easily be added to the Site Plan with minimal change to the building configuration.

4. Site Control: If Coke street is not included in the site control and is part of the ingress/egress, then evidence that an easement, leasehold, or similar documented access, as well as evidence that the fee title owner agrees that the LURA may extend to the access easement is required.

The Applicant has included with this response a letter from the City indicating evidence of the submission of the request to vacate the existing plat containing Coke Street and includes a temporary access easement for Coke Street until such plat in vacated. Additionally, we have included an amendment to the purchase agreement for the acknowledgement of the LURA encroachment into the access easement.

5. Title Commitment: The legal description in the title commitment appears to describe a different development site. It does not match the site control contract's legal description. The title commitment should confirm the size of the site pursuant to 10 TAC §11.204(12).

The title commitment has been revised to be consistent with other exhibits.

- 6. Title Commitment: The title commitment should list the name of the Development Owner or an Affiliate as the proposed insured. The entity named as the proposed insured does not appear on the ownership charts.**

Bouldin CRE, LLC is an affiliate of Bouldin Communities, LLC. The title commitment has been revised to have the insured listed as Bouldin Communities, LLC, a member of the GP.

- 7. Site Plan: Submit a site plan that conforms to the requirements of 10 TAC §11.204(9). I don't find the following items on the site plan: The size of the site stated, the flood plain boundaries, the location of van parking space(s), and a table showing the Common Area space on a building by building basis.**

The Site Plan has been revised to include the information requested.

- 8. Site Plan: The number of units stated on the site plan on page 114 and 115 (sheet C1.0) differ. Clarify what is correct.**

The total number of units on the Site Plan has been revised to correct the number to 48.

- 9. Elevations: Confirm that the exterior composition is typical for all sides. There appears to be a typographical error where only the left side of several building types is depicted.**

The elevations have been revised to include the exterior composition for all sides of the buildings.

- 10. Elevations: I don't find the building height of the community center.**

The community building elevation has been revised to include the building height

- 11. Building/Unit Configuration Form: The number of each unit type and total units do not agree with the Rent Schedule and site plan on page 114. Clarify what is correct.**

The Building Configuration form has been revised to be consistent with the Rent schedule and Site Plan data.

- 12. Building/Unit Configuration Form: The number of parking spaces does not agree with the site plan or Accessible Parking Calculation worksheet.**

The Building Configuration form has been revised to be consistent with the Site Plan and Parking form.

- 13. Accessible Parking Calculation: Two additional accessible parking spaces are required for a total of six. The calculation entered in your application form differs from the calculation when entered by staff.**

The Parking form has been revised to include the additional two units.

- 14. Rent Schedule: A description of the non-rental income was omitted.**

Form revised to indicate the non-rental income.

- 15. Annual Operating Expenses: All amounts listed as "other" require a description. Additionally, avoid using terms such as, "miscellaneous".**

The form is revised to indicate the other and miscellaneous expenses.

- 16. Schedule of Sources & Uses: The amounts of the bridge, construction, and permanent loans do not agree with the commitment letter. Clarify which is correct and revise any appropriate exhibit(s).**

These were correct in the EXCEL version. We failed to swap out this page in the PDF version with a last minute change.

The commitment letters are correct. The S&U has been revised to be consistent with the commitment letters.

- 17. Financing Narrative: The amounts of the bridge, construction, and permanent loans do not agree with the commitment letter.**

The form has been revised to be consistent with the commitment letters.

- 18. Financing Narrative: The term of the permanent loan and amount of deferred developer fee stated in the Financing Narrative does not agree with the Schedule of Sources & Uses.**

The form has been revised to be consistent with the commitment letters.

- 19. Commitment: The letter submitted regarding the amount of the deferred developer fees does not agree with the Schedule of Sources & Uses.**

The form has been revised to be consistent with the commitment letter.

- 20. Sponsor Characteristics: I don't find a statement that explains how the HUB will materially participation will be achieved.**

The participation outline is included with this response.

- 21. Ownership Charts: Clarify whether the entity name of the HUB is "ARX Housing Initiative, LLC" or "ARX Housing Initiatives" and revise the appropriate exhibit(s) so that all documents agree.**

The Org Chart has been revised to correct the typo on Arx Housing Initiatives, LLC.

- 22. Ownership Charts: Please submit a list of all Persons that have the ability to exercise Control.**

The Org Chart submitted for #21 indicates the "Control" entities and persons which should be consistent with the Control Form.

- 23. ESA: Submit a statement that any additional assessments of the report will be performed prior to closing.**

A statement is included with this request.

- 24. ESA: I don't find the statement from the report provider that the preparer will not materially benefit from the Development other than by receiving a fee and that the fee is not contingent upon the report's findings.**

The report has been revised to include the requested statement.

- 25. Site Design and Feasibility Report: I don't find property identification numbers included in the report. Please clarify.**

The report has been revised to include the identification numbers.

Should you need further clarification or correction, please do not hesitate to contact me.

Sincerely,



Robbye G. Meyer
Principal, Managing Member



City of *Sweetwater*

**P. O. BOX 450 • 200 EAST FOURTH STREET
SWEETWATER, TEXAS 79556 • (325) 236-6313
www.cityofsweetwatertx.com**

Date: April 15, 2019

To: Attn: Jeff Markey
BOCHI 2019 Sweetwater, LP
3801 N. Capital of Texas Hwy., Suite E-204 #435
Austin, Texas 78746

RE: NW GEORGIA AVENUE between Hubbard Street and Throckmorton Street (Lots 1 through 11, and Lots 14 through 24, Block 23, Southside Addition, Sweetwater, Nolan County Texas; and Lots 1 through 10, and Lots 16 through 24, Block 26, Southside Addition, Sweetwater, Nolan County, Texas (together, "Site").

This letter acknowledges that the City of Sweetwater is working with the developer, BOCHI 2019 Sweetwater, LP, by way of Sweetwater Planning and Development Services Department and other City Officials, on established processes to vacate the existing plat which includes the area bordered by NW GEORGIA AVENUE between Hubbard Street and Throckmorton Street (Lots 1 through 11, and Lots 14 through 24, Block 23, Southside Addition, Sweetwater, Nolan County Texas; and Lots 1 through 10, and Lots 16 through 24, Block 26, Southside Addition, Sweetwater, Nolan County, Texas.

We expect the existing plat will be vacated and the requested plat will be accepted after completing the proper procedures as required by the City of Sweetwater. When the subject property is re-platted, the property owner will have access to Georgia Avenue (I-20 Frontage) from the property through a permanent easement which will run with the land.

A temporary easement for the developer is included under separate cover which will allow access from the Site to Georgia Avenue (I-20 Frontage) from Coke St., Blocks 23 and 26 south of Mississippi Street.

Sincerely,

David A. Vela
City Manager
City of Sweetwater

We lead with trust and respect to provide a vibrant, secure community for all.

PROFESSIONALISM INTEGRITY CONTINUOUS IMPROVEMENT TEAMWORK

TEMPORARY ACCESS EASEMENT AGREEMENT

THIS TEMPORARY ACCESS EASEMENT AGREEMENT ("Agreement") is made and entered into as of April 15, 2019, by and among CITY OF SWEETWATER, a municipal corporation located in Nolan County, Texas ("Grantor"), whose address is 200 E. Fourth Street, Sweetwater, TX 79556, and BOCHI 2019 Sweetwater, a Limited Partnership (LP), (the "Grantee") whose legal address is 3801 N. Capital of Texas Hwy., Suite E-204 #435, Austin, Texas 78746.

RECITALS

A. Grantee has requested from Grantor a temporary access easement for purposes of accessing certain public right-of-way (ROW) property owned by Grantee.

B. Grantor has agreed to grant such an access easement on and subject to the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the foregoing Recitals, the payment of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a temporary, non-exclusive easement over, under and across the Coke Street Public Right-of-Way (ROW) located in real property described as reflected on Exhibit A, attached hereto (the "Premises"), for the use of Grantee and its successors and assigns for ingress and egress to described property subject to the terms of this Agreement.

2. Condition of Premises. The grant of the easement hereunder is made on an "AS IS" basis without any representation or warranty as to the condition of the Premises or any improvements thereon. Grantor is under no obligation to maintain or repair any improvements on the Premises. Grantee shall not construct or make any improvements on the Premises.

3. Risk. Grantee shall bear all risk associated with the use of the Premises, and waives any and all claims, liabilities, damages, injuries and other claims of any nature whatsoever relating to the use of the Premises by Grantee and its employees, contractors and invitees. Grantee shall be responsible for any damage to the Premises caused by Grantee or any of its employees, contractors and invitees.

4. Term. This Agreement and the easement granted hereunder shall terminate six (6) months from the date of signed Agreement.

5. Reservations. Grantor reserves the right to use the Premises for ingress and egress for itself, its tenants, assigns and invitees and to otherwise use the Premises for all other purposes that do not unreasonably interfere with Grantee's use of access easement.

6. Limitations of Use. Grantee's use of the Premises shall be limited in that its activities shall not interfere in any way with the existing uses already in place on the Premises by the Grantor, its permitted assigns or other easement holders.

7. General Provisions.

(a) Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties relative to the matters contained herein, and supersedes all prior negotiations, understandings or agreements in regard thereto, whether written or oral. This Agreement may be amended, altered or revoked only by written instrument executed by Grantor and Grantee.

(b) Construction. The subject headings used in this Agreement are included for purposes of reference only, and shall not affect the construction or interpretation of any of its provisions. Throughout this Agreement, the singular shall include the plural, the plural shall include the singular; all genders shall be deemed to include other genders, wherever the context so requires; and the terms "including," "include" or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean "including, but not limited to," or "including, by way of example and not limitation."

(c) Exhibits. All schedules, exhibits and addenda attached to this Agreement and referred to herein shall for all purposes be deemed to be incorporated in this Agreement by this reference and made a part hereof.

(d) Covenants to Run With Land. The easement and the rights and obligations granted and created by this Agreement shall run with the land throughout Agreement period, and they shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns.

(e) Further Acts. Upon reasonable request from a party hereto, from time to time, each party shall execute and deliver such additional documents and instruments and take such other actions as may be reasonably necessary to give effect to the intents and purposes of this Agreement. Upon termination of the Easement or this Agreement for any reason, Grantee will execute and record an instrument confirming such termination and relinquishing any interest in the Premises.

(f) Authority and Title. Grantor represents and warrants that it has full right and authority to grant the easements granted herein, and that this grant is made free and clear of all liens and encumbrances, except those of record and the rights of Grantor's tenants.

(g) No Public Dedication. Nothing contained herein shall be deemed to be a grantor dedication of any rights or use to the public in general.

(h) Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument.

(i) Maintenance of the Surface. Maintenance of the surface of the Easement shall be the responsibility of Grantees.

(j) Attorney's Fees. If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

(k) Choice of Law. This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

(l) Counterparts. This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

(m) Integration. This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

(n) Legal Construction. If any provision in this agreement is for any reason unenforceable to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

(o) Notices. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

[THE REMAINDER OF THIS PAGE LEFT BLANK SIGNATURE PAGE FOLLOWS]

THIS AGREEMENT is executed as of the date and year first above written.

GRANTOR:

CITY OF SWEETWATER, a municipal corporation located in Nolan County, Texas

By: [Signature]
David A. Vela, City Manager

GRANTEE:

BOCHI 2019 Sweetwater, a Limited Partnership (LP)

By: [Signature]
Jeff Markey, Manager

STATE OF TEXAS)

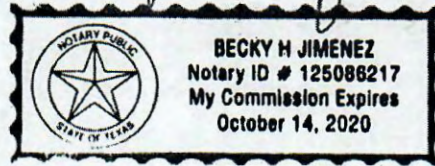
) ss.

COUNTY OF NOLAN)

This instrument was acknowledged before me on the 15 day of April, 2019 by David Vela, City Manager of the City of Sweetwater, a municipal corporation located in Nolan County of the State of Texas.

Witness my hand and official seal.

My commission expires: October 14, 2020
[Signature]
Notary Public



STATE OF TEXAS)

) ss.

COUNTY OF TRAVIS)

This instrument was acknowledged before me on the 15 day of April, 2019 by Jeff Markey, Manager of BOCHI 2019 Sweetwater L.P.

Witness my hand and official seal.

My commission expires: June 12, 2022
[Signature]
Notary Public

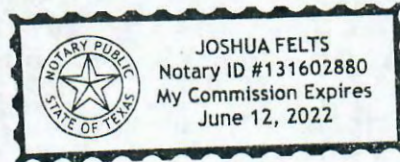


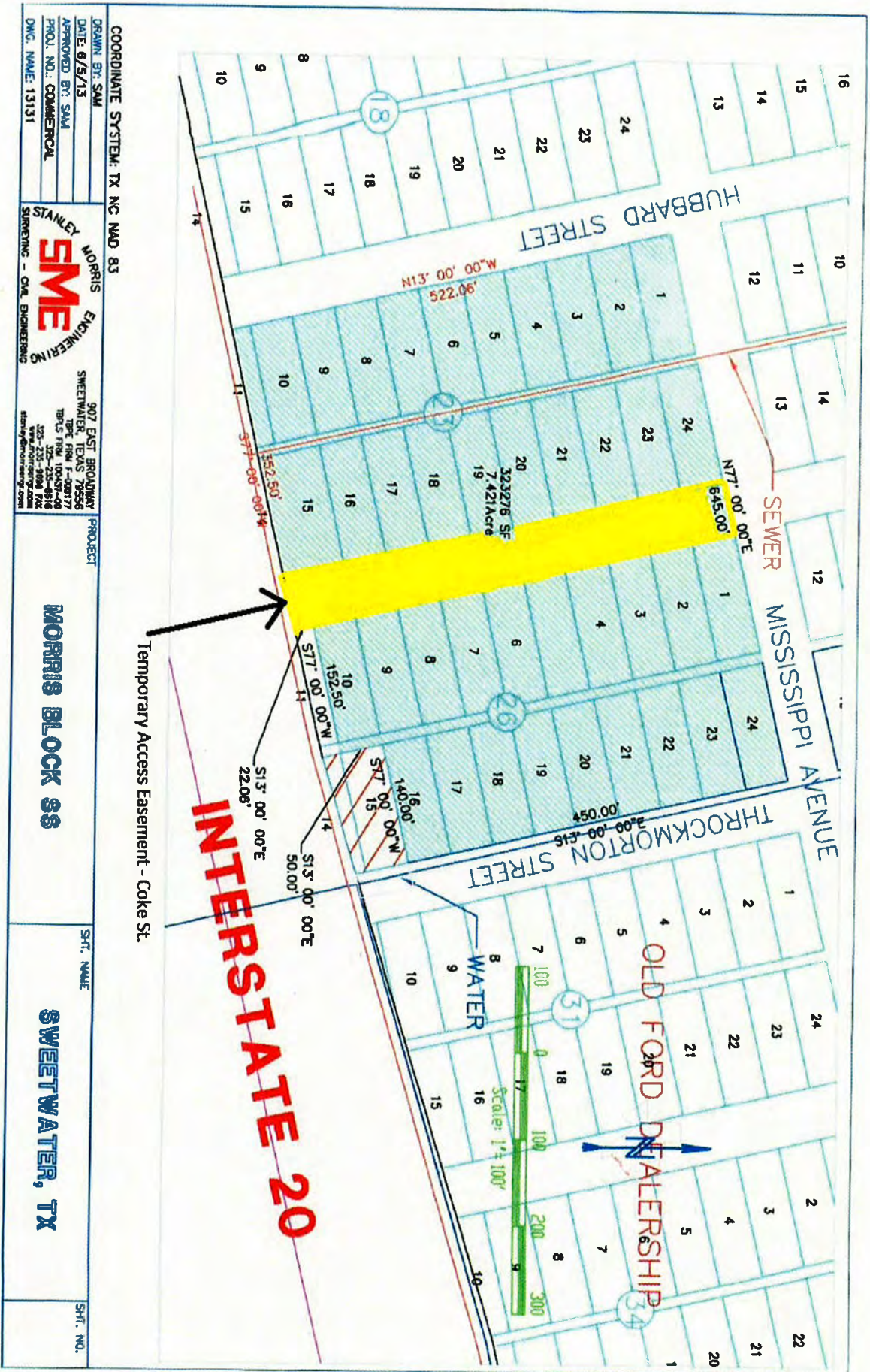
EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

DESCRIPTION

NW GEORGIA AVENUE between Hubbard Street and Throckmorton Street (Lots 1 through 11, and Lots 14 through 24, Block 23, Southside Addition, Sweetwater, Nolan County Texas; and Lots 1 through 10, and Lots 16 through 24, Block 26, Southside Addition, Sweetwater, Nolan County, Texas (together, "Site").

Exhibit A



COORDINATE SYSTEM: TX NC NAD 83		
DRAWN BY: SAM	PROJECT	
DATE: 6/5/13	MORRIS BLOCK 88	
APPROVED BY: SAM	SWEETWATER, TX	
PROJ. NO.: COMMERCIAL	SWEETWATER, TX	
DWG. NAME: 13131	SWEETWATER, TX	
<p>STANLEY MORRIS ENGINEERING INC SWEETWATER, TEXAS 78556 907 EAST BROADWAY TEL: 254-235-8817 FAX: 254-235-8818 WWW.STANLEYMORRIS.COM</p>		

**AMENDMENT TO
AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY**

This AMENDMENT TO THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Amendment") is made and entered into as of April 14, 2019 by and between Bouldin Communities, LLC ("Purchaser") and Stanley Morris ("Seller").

WHEREAS, Purchaser and Seller are parties to a certain Agreement for Purchase and Sale of Real Property, dated January 14, 2019 wherein Purchaser sought to purchase a certain parcel of property located at NW GEORGIA AVENUE between Hubbard Street and Throckmorton Street (Lots 1 through 11, and Lots 14 through 24, Block 23, Southside Addition, Sweetwater Nolan County, Texas; and Lots 1 through 10, and Lots 16 through 24, Block 26 Southside Addition, Sweetwater, Nolan County, Texas from Seller; and

WHEREAS, Purchaser and Seller agree to amend the Contract as set forth herein;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein are hereby acknowledged, the parties, intending to be legally bound, do hereby agree that the Contract shall be amended as follows:

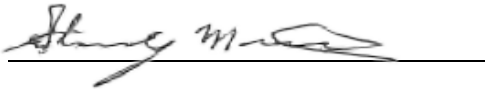
1. Section 10.4 Seller/fee title owner understands a Land Use Restriction Agreement ("LURA") will be placed on the property and may extend to the temporary easement granted by the City of Sweetwater for access to the property until the previous plat is vacated or a permanent easement is in place and this Agreement is closed.

AGREED, to be effective for all purposes on February 14, 2019 (the "**Effective Date**"), by and between:

SELLER:

Stanley Morris

By: _____



PURCHASER:

Bouldin Communities, LLC

By: _____



Jeff Markey, Member

19368 Sweetwater Springs Termination Notice



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*
Leslie Bingham-Escareño, *Vice Chair*
Paul A. Braden, *Member*
Asusena Reséndiz, *Member*
Sharon Thomason, *Member*
Leo Vasquez, *Member*

May 9, 2019

Writer's direct dial: 512/475-1676
Email: marni.holloway@tdhca.state.tx.us

Mr. Jeff Beaver
BOCHI 2019 Sweetwater, LP
404 E McKinney Avenue
Albertville, Alabama 35950

RE: STATUS OF 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19368 SWEETWATER SPRINGS

Dear Mr. Beaver:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of the Application mentioned above. Initial review of the Application indicated that a portion of the Development Site consists of Coke Street, which according to the Site Design and Feasibility Report, "is platted but not built and will require vacating." The Application includes a purchase and sale contract that does not include the "Coke Street" section of the Development Site. 10 TAC §11.204(10) requires evidence of Site Control as a threshold requirement for a complete Application. The definition of Site Control at 10 TAC §11.1(d)(117):

Ownership or a current contract or series of contracts, that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

On April 1, 2019, staff issued a deficiency notice that requested that the Applicant provide evidence that the Applicant has in place an agreement with the City of Sweetwater with regard to Development on that portion of the Development Site that includes an area currently platted as Coke Street. Alternatively, staff requested that if Coke Street was not a part of the Development Site, the Applicant should provide evidence that an agreement with the city regarding ingress and egress using Coke Street was in place either on or before the Application submission deadline and that the fee title



owner agrees that the land use restriction agreement (LURA) may extend to an access easement. Response to the deficiency notice was due on April 8, 2019.

In the April 8 response to the notice, the Applicant stated that “[t]he applicant contacted the city to vacate the plat for Coke Street and it is anticipated that the plat will be vacated as the city completed the same type vacation of land to a property owner just 6 months ago. However, the Site Plan was design (sic) so that if the city does not vacate the plat for Coke Street, the street can easily be added to the Site Plan without change to the building configuration.” The response included a request for an extension of time to respond to these specific issues, and an extension of five business days was granted to the Applicant.

The April 15, 2019, response included a letter from the City of Sweetwater dated April 15, 2019, which stated that the city is working with the Developer “on established processes to vacate the existing plat.” The letter clarified that the plat will be accessed via Georgia Avenue (the Interstate 20 Frontage Road), and the final plat will include an easement that will run with the land. Evidence of a temporary easement for Coke Street at Georgia Avenue was provided with the response. The response also included an agreement between the Applicant and the private land Seller dated April 14, 2019, that states that the Seller/fee title owner “understands a LURA will be placed on the property and may extend to the temporary easement granted by the City of Sweetwater for access to the property until the previous plat is vacated or a permanent easement is in place and this agreement closed.”

Staff has determined that the responses did not provide evidence that the Applicant had an agreement with the City of Sweetwater with regard to development on or ingress and egress access to Coke Street, prior to submission of the Application that meets the definition of Site Control in the QAP. 10 TAC §11.1(a)(78) of the 2019 Qualified Allocation Plan (QAP) related to Material Deficiency defines a Material Deficiency as:

Any deficiency in a Pre-Application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. It is possible that multiple deficiencies that could individually be characterized as Administrative Deficiencies, when taken as a whole would create a need for substantial re-review of the Application and as such would be characterized as constituting a Material Deficiency.

The Applicants inability to provide documentation that existed prior to submission of the Application to meet threshold requirements is material, and results in termination of the Application, subject to your ability to appeal.

An appeal process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in 10 TAC §11.902 of the 2019 QAP. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or if the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instructions on the appeals process.

19368 APPLICATION STATUS

May 9, 2019

Page 3

If you have any questions or concerns, please contact me at 512-475-1676 or by email at marni.holloway@tdhca.state.tx.us.

Sincerely,



Marni Holloway
Director of Multifamily Finance

Appeal Documents



Arx Advantage, LLC

Robbye G. Meyer
1305 Dusky Thrush Trail
Austin, Texas 78746
(512) 963-2555
robbye@arxadvantage.net

May 15, 2019

Via Electronic Mail

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas

Re: 19368 Sweetwater Springs (the "**Development**")

Dear Ms. Holloway:

The BOCHI 2019 Sweetwater, LP ("**Applicant**"), has applied for housing tax credits for the Development referenced above. This letter responds to the Eligibility notice issued May 9, 2019.

General Notes

The Applicant submitted an Application that included a potential easement to access the preferred entrance to the proposed site from the main highway. The Applicant submitted a site plan which included the easement and a vacated plat from the city which contained a proposed city street.

The Rules

The definition of Site Control at 10 TAC §11.1(d)(117): Ownership or a current contract or series of contracts, that meets the requirements of §11.204(10) of this chapter, that is legally enforceable giving the Applicant the ability, not subject to any legal defense by the Owner or anyone else, to develop and operate a Property and subject it to a LURA reflecting the requirements of any awards of assistance it may receive from the Department.

Section 11.204(10) states "The Department may request documentation at any time after submission of an Application of the Development Owner's ability to compel title of any Affiliated property acquisition(s) and the Development Owner must be able to promptly provide such documentation or the Application, award, or Commitment may be terminated."

Section 11.204(10)(D) states "If ingress and egress to a public right of way are not part of the Property described in the site control documentation, the Applicant must provide evidence of an easement, leasehold, or similar documented access along with evidence that the fee title owner of the property agrees that the LURA may extend to the access easement."

Grounds for Appeal

The proposed Sweetwater development is located off Interstate Highway 20 in Sweetwater, Texas. The City of Sweetwater previously platted a city street (Coke Street) through the property in question and initiated curb cuts to the highway for the future Coke Street construction. The construction of Coke Street has remained dormant for many years. In conversation with the real estate broker at the time the Applicant was negotiating the terms of the site control, it was contemplated that the Applicant could have the previous plat vacated and construct the proposed Sweetwater development using the all the parcels of land purchased. The Applicant had the architect design the site for the best possible use of the property. The site plan submitted was purposefully designed with two ingress and egress locations for the possibility of the city's denial of the vacated plat.

In accordance with §11.204(10), the Department requested the easement documentation from the Applicant through a deficiency and the Applicant submitted the required information to the Department promptly. The rule does not state such documentation must be dated prior to March 1st, it merely states that the documentation must be submitted promptly when requested.

Should the Department not conclude the previous information submitted acceptable, as an alternative, the Applicant would like to propose the Department allow a minor change to the site plan. Since the original design contemplated the possibility of the city's denial of the vacated plat, the side ingress and egress on Hubbard Street can be utilized as the main entrance to property. There would be a need to swap the back residential building with the clubhouse on the site plan to allow for Coke Street to be constructed by the city as currently platted. This would not require the deficiency for the easement for Coke Street; therefore, not require the LURA language from the fee title owner. These minor changes to the site plan do not constitute a "material deficiency" and could allow the Applicant to continue through the application review process. The Applicant already has the alternative site plan drafted (attached as Exhibit A).

Request for Approval on Appeal of Eligibility

With the above information, we respectfully request that you grant the appeal and allow the application to continue through the review process. If additional information is required, please let us know. We appreciate your consideration of this presentation.

The Applicant wishes to reserve the right to appeal to the TDHCA Board, pending a decision by the Executive Director.

Sincerely,



Robbye G. Meyer

cc: Jeff Beaver
Jeff Markey

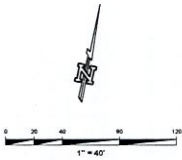
EXHIBIT A

Original Site Plan

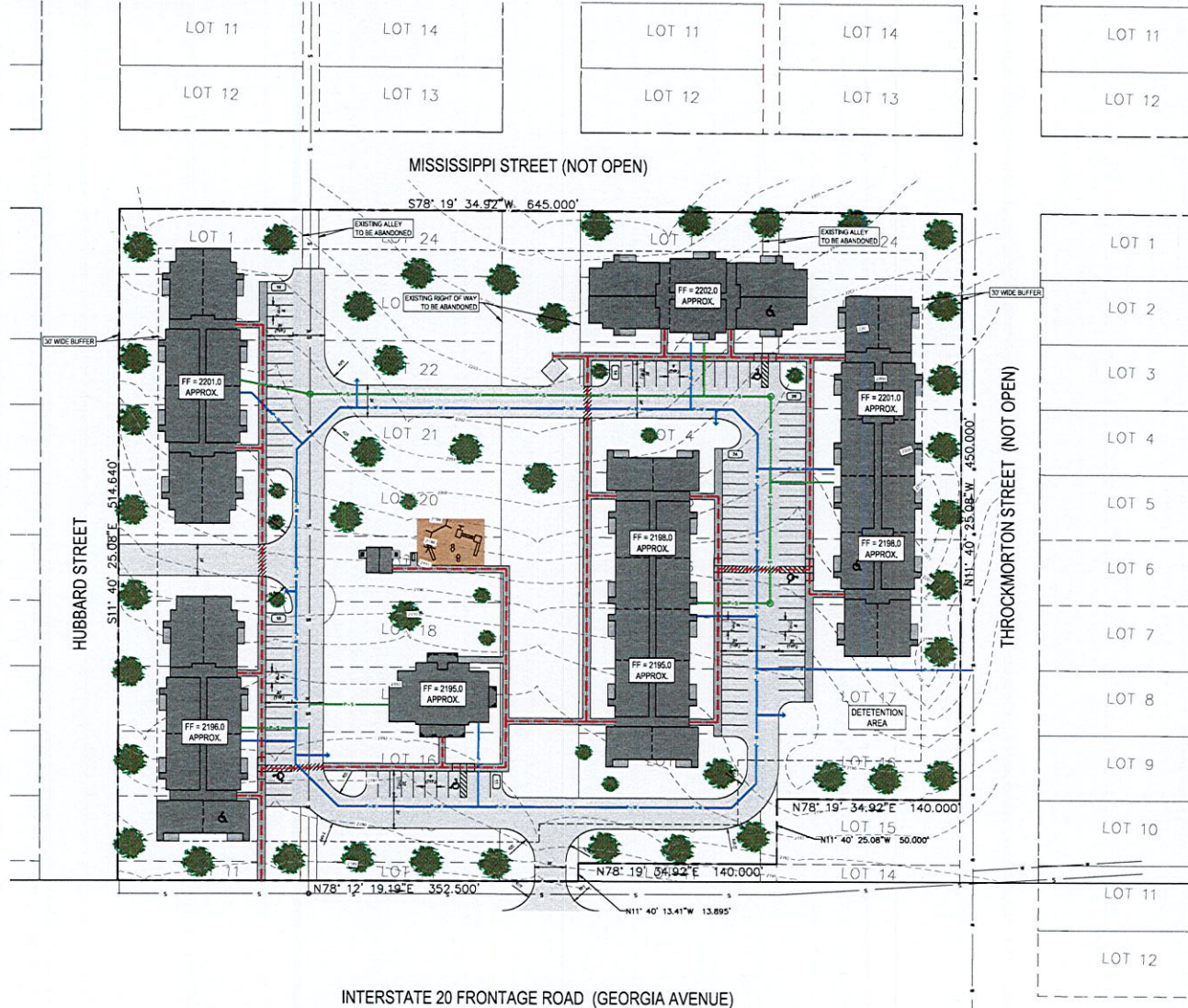
GENERAL NOTES

1. THE ENGINEER HAS RESEARCHED CODES, ORDINANCES, AND OTHER DEVELOPMENTAL REQUIREMENTS OF LOCAL GOVERNMENT, INCLUDING FIRE WITH JURISDICTION OVER THE SITE, AND VERIFY THAT THE SITE PLAN CONFORMS TO ALL APPLICABLE ZONING, SITE DEVELOPMENT, AND BUILDING CODES ORDINANCES. ACTUAL SUBMISSION TO, OR REVIEW BY A LOCAL GOVERNMENT, INCLUDING FIRE, IS NOT REQUIRED.
2. THERE ARE NO KNOWN VARIANCES THAT WILL BE REQUIRED FOR THIS PROJECT.
3. DIMENSIONS ARE TO FACE OF CURB, RADI ARE TO FACE OF CURB, OR CENTER OF STRIPING UNLESS NOTED OTHERWISE.
4. CONTRACTOR SHALL REFER TO ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF BUILDING EXIT PORCHES, RAMPS, SIDEWALKS, DOWN SLOPES AND OTHER APPURTENANCES WHICH ARE CONNECTED TO THE BUILDING. PRECISE BUILDING DIMENSIONS AND EXACT BUILDING UTILITY LOCATIONS.
5. CONTRACTOR SHALL REFER TO ELECTRICAL PLANS FOR TYPES OF LIGHT FIXTURES AND CONDUIT ROUTING.
6. CONTRACTOR SHALL PROVIDE FIRE LANE STRIPING AS PER GOVERNING ENTITY.
7. EXISTING TOPOGRAPHIC INFORMATION WAS TAKEN FROM GOOGLE EARTH ELEVATION DATA AND NO WARRANTY IS MADE AS TO ITS ACCURACY.
8. THE MINIMUM HORIZONTAL SEPARATION BETWEEN PARALLEL WATER AND SEWER LINES IS TEN (10) FEET, AND THE MINIMUM VERTICAL SEPARATION BETWEEN CROSSING WATER AND SEWER LINES IS EIGHTEEN (18) INCHES.
9. PROPOSED FINISH FLOOR ELEVATIONS ARE PRELIMINARY AND WERE DEVELOPED FOR APPROXIMATE EARTHWORK QUANTITIES.
10. A PORTION OF THIS PROPERTY LIES WITHIN ZONE A PER FLOOD INSURANCE RATE MAP NO. 485520055C, EFFECTIVE DATE JUNE 19, 1995.

LEGEND	
	PROPOSED BUILDING FOOTPRINT
	PROPOSED PARKING SPACES
	PROPOSED FIRE HYDRANT
	PROPOSED WATER LINE
	PROPOSED SANITARY SEWER LINE
	EXISTING WATER LINE
	EXISTING SANITARY SEWER LINE
	PROPERTY BOUNDARY
	HIGH WATER TABLE



APARTMENTS/STREETS/UNITS	PARKING DATA	
	PARKING REQUIRED	PARKING PROVIDED
	96 SPACES	107 SPACES



SWEETWATER SPRINGS APARTMENTS S
XXXX GEORGIA AVENUE
SWEETWATER, TEXAS

PRELIMINARY
SITE PLAN



DATE	DESCRIPTION	BY

C1.0

EXHIBIT A

Alternative Site Plan

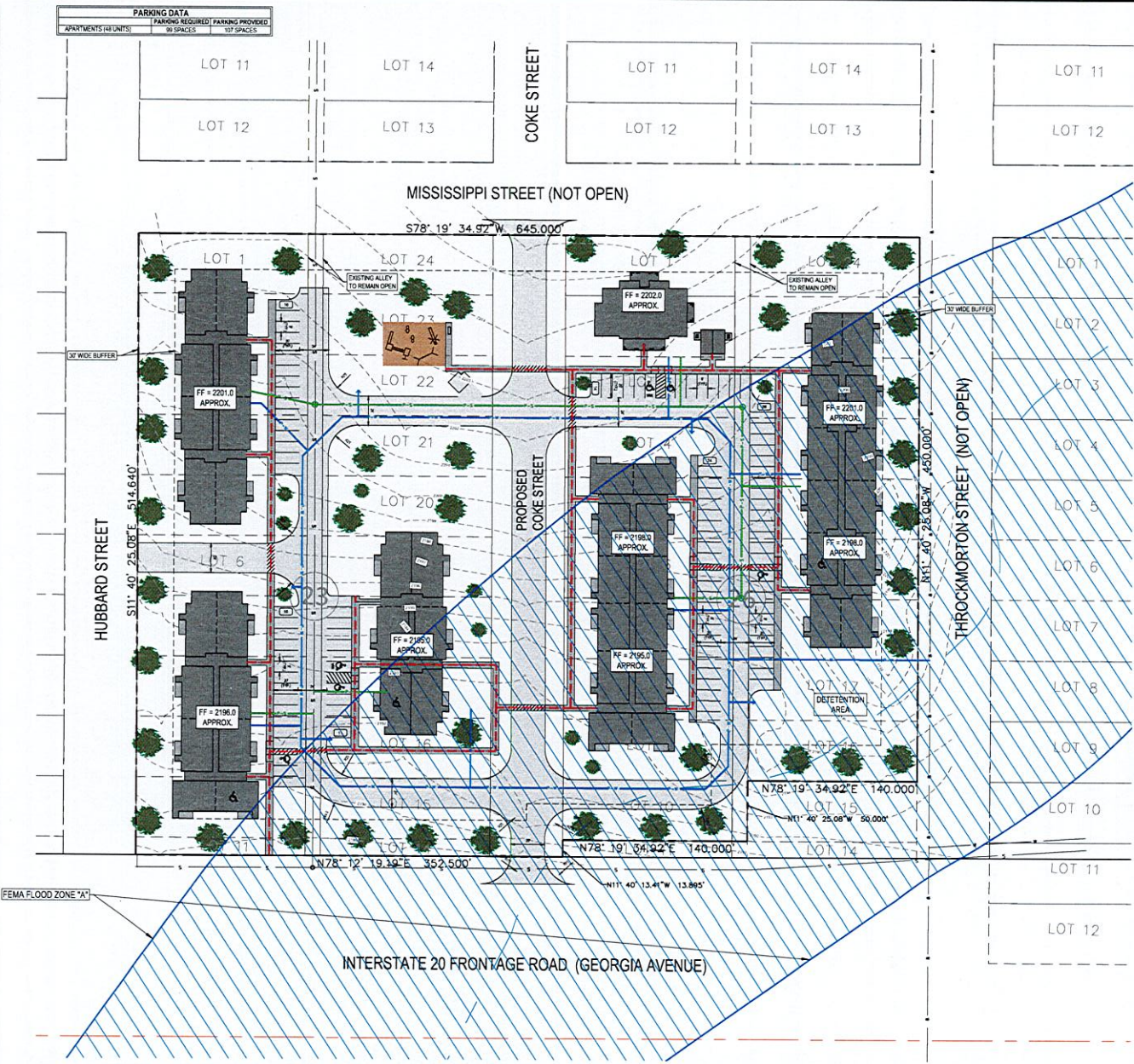
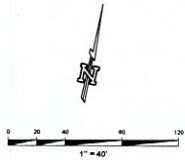
GENERAL NOTES

1. THE ENGINEER HAS RESEARCHED CODES, ORDINANCES AND OTHER DEVELOPMENTAL REQUIREMENTS OF LOCAL GOVERNMENT, INCLUDING FIRE, WITH JURISDICTION OVER THE SITE, AND VERIFY THAT THE SITE PLAN CONFORMS TO ALL APPLICABLE ZONING, SITE DEVELOPMENT AND BUILDING CODED ORDINANCES. ACTUAL SUBMISSION TO, OR REVIEW BY A LOCAL GOVERNMENT, INCLUDING FIRE, IS NOT REQUIRED.
2. THERE ARE NO KNOWN VARIANCES THAT WILL BE REQUIRED FOR THIS PROJECT.
3. DIMENSIONS ARE TO FACE OF CURB, RADI TO FACE OF CURB, OR CENTER OF STRIPING UNLESS NOTED OTHERWISE.
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9. PROPOSED FINISH FLOOR ELEVATIONS ARE PRELIMINARY AND WERE DEVELOPED FOR APPROXIMATE EARTHWORK QUANTITIES.
10. A PORTION OF THIS PROPERTY LIES WITHIN ZONE A PER FLOOD INSURANCE RATE MAP NO. 4850200055C, EFFECTIVE DATE JUNE 15, 1985.

PARKING DATA		
PARKING REQUIRED	PARKING PROVIDED	
APARTMENTS (48 UNITS)	99 SPACES	107 SPACES

LEGEND

	EXISTING FIRE HYDRANT
	PROPOSED FIRE HYDRANT
	EXISTING WATER LINE
	PROPOSED WATER LINE
	EXISTING SANITARY SEWER
	PROPOSED SANITARY SEWER
	EXISTING GAS LINE
	PROPOSED GAS LINE
	EXISTING ELECTRIC
	PROPOSED ELECTRIC
	EXISTING UTILITY
	PROPOSED UTILITY



SWEETWATER SPRINGS APARTMENT S
7.4 ACRES
GEORGIA AVENUE
SWEETWATER, TEXAS

PRELIMINARY
SITE PLAN

CARNEY
ENGINEERING
COMPANY

This document is released for the purpose of record review under the authority of Carney, P.C., 8/20/14 on April 1, 2015.

TITLE: PRELIMINARY SITE PLAN NO. 4-0011
DATE: 04/01/15
SCALE: 1/8"=1'-0"
PROJECT: SWEETWATER

C1.0

TDHCA Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*
Leslie Bingham-Escareño, *Vice Chair*
Paul A. Braden, Member
Asusena Reséndiz, Member
Sharon Thomason, Member
Leo Vasquez, Member

May 20, 2019

Writer's direct dial: 512.475.1676
Email: david.cervantes@tdhca.state.tx.us

Robbye Meyer
Arx Advantage, LLC
1305 Dusky Thrush Trail
Austin, Texas 78746

RE: APPEAL OF TERMINATION FOR 2019 COMPETITIVE HOUSING TAX CREDIT APPLICATION 19368 SWEETWATER SPRINGS

Dear Ms. Meyer:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of your appeal dated May 15, 2019 for the Application mentioned above. Staff had determined that the Applicant did not have an agreement with the City of Sweetwater with regard to development on or ingress and egress access to Coke Street, prior to submission of the Application. Further, the amendment to the purchase and sale contract is between the Applicant and the Seller of the private property and not with the City of Sweetwater, which is the entity that must agree to have the LURA extend to the Coke Street easement. The Application was terminated due to the Applicant's inability to provide documentation that existed prior to submission of the Application to meet threshold requirements, subject to the Applicant's ability to appeal.

The appeal states:

"In accordance with §11.204(10), the Department requested the easement documentation from the Applicant through a deficiency and the Applicant submitted the required information to the Department promptly. The rule does not state such documentation must be dated prior to March 1st, it merely states that the documentation must be submitted promptly when requested."

The rules address the requirement for the existence of documentation prior to submission of the Application. Per 10 TAC 11.1(d)(78) related to Material Deficiency:



(78) Material Deficiency--Any deficiency in a Pre-Application or an Application or other documentation that exceeds the scope of an Administrative Deficiency. Inability to provide documentation that existed prior to submission of an Application to substantiate claimed points or meet threshold requirements is material and may result in denial of the requested points or a termination in the case of threshold items. (emphasis added)

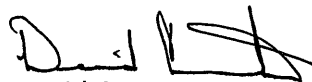
Per 10 TAC §11.201(7) related to Deficiency Process:

(A) It is critical that the use of the deficiency process not unduly slow the review process, and since the process is intended to clarify or explain matters or obtain at the Department's request missing information (that should already been in existence prior to Application submission), there is a reasonable expectation that a party responding to an Administrative Deficiency will be able to respond immediately. (emphasis added)

The contract amendment was dated April 14, 2019, and the letter and temporary access easement agreement from the City of Sweetwater was dated April 15, 2019. The appeal does not address the fact that the amendment to the purchase and sale contract is between the Applicant and the Seller of the private property and not with the City of Sweetwater, which is the entity that must agree to have the land use restriction agreement (LURA) extend to the Coke Street easement.

I do not find that the issues raised in your appeal regarding whether the Applicant had an agreement with the city for ingress and egress access using Coke Street and that the fee title owner agreed that the LURA may extend to an access easement clearly demonstrate that the Application should not have been terminated, and accordingly I must deny the appeal. Per your request, staff has placed this item on the agenda for the May 23, 2019, meeting of the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the 2019 QAP for full instruction on the appeals process. Should you have any questions, please contact Sharon Gamble, Competitive Tax Credit Program Administrator, at sharon.gamble@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,



David Cervantes
Acting Director

7d

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

7e

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on staff determinations regarding Application disclosure under 10 TAC §11.101(a)(2) related to Applicant Disclosure of Undesirable Site Features for 19180 St. Elmo Commons

RECOMMENDED ACTION

WHEREAS, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, Development Sites within the applicable distance of any of the identified undesirable features will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility;

WHEREAS, for the items requiring disclosure under 10 TAC §11.101(a)(2), staff received disclosure for St. Elmo Commons (19180) and discovered another undesirable site feature that was indirectly disclosed through the Environmental Site Assessment but not by the Applicant for the purposes of 10 TAC §11.101(a)(2); and

WHEREAS, staff has conducted a further review of the proposed site and the surrounding neighborhood pursuant to 10 TAC §11.101(a)(3) and prepared a summary for the Board;

NOW, therefore, it is hereby,

RESOLVED, that the Board find the site ineligible in accordance with 10 TAC §11.101(a)(2) of the Qualified Allocation Plan for St. Elmo Commons (19180).

BACKGROUND

Pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan (QAP) related to Undesirable Site Features, Development Sites within the applicable distance of any of the undesirable features identified in the paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility.

Per 10 TAC §11.101(a)(2), the Department's Governing Board has final decision making authority in making an affirmative determination or finding the site ineligible. Development Sites within the applicable distance of any of the undesirable features identified in the rule will be considered

ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Should the Board make the determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is final and not subject to further appeal.

Summary of Disclosure: The proposed Development Site is located within 500 feet of two concrete batching plants. Centex Materials, located at 817 St. Elmo Road, is located approximately 470 feet from the Development Site. Custom-Crete is located approximately 100 feet from the Development Site. For both plants, the batching hoppers and mixers are greater than 500 feet from the Development Site but less than 440 yards from the Development Site.

Mitigation Efforts: 10 TAC §11.101(a)(2)(F) states that a Development Site will be found ineligible if the Site is "located within 500 feet of heavy industry (i.e., facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations))."

A concrete batch plant may constitute 'heavy industry'. Further, through previous Application reviews, staff had learned that, sometimes, a 440-yard separation between permanent residences and a concrete batch plant may apply, per the requirements of the Texas Commission on Environmental Quality (TCEQ). Regarding 10 TAC §11.101(a)(2) related to Undesirable Site Features, the rule includes the following language:

"Development Sites within the applicable distance of any of the undesirable features identified in subparagraphs (A) - (K) of this paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and support Site eligibility.... Where there is a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below, then such smaller distances may be used and documentation such as a copy of the local ordinance identifying such distances relative to the Development Site must be included in the Application. ***If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.***"(emphasis added)

Facilities like Centex Materials and Custom Crete are under the purview of the Texas Commission on Environmental Quality (TCEQ), whose rules are found in the Texas Health and Safety Code at Title 5, Subtitle C, Chapter 382, the Texas Clean Air Act. This statute includes the following prohibition regarding locating certain concrete plants and concrete crushing plants near residential structures:

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS. (a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements: (19) the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place

of worship at the time the application to use the permit is filed with the commission if the plant is located in an area that is not subject to municipal zoning regulation.

The statute allows for an exception to the minimum distance requirement of 440 yards to a residence if the plant is located in an area with municipal zoning. According to the Applicant, the City of Austin confirmed that it does not mandate minimum distances for permanent residences from operations like concrete batch plants, and instead defers to whatever the zoning allows. The two parcels being combined to form the proposed Development Site are zoned CS-MU-CO-NP, which permits multifamily residential development according to Christopher Johnson, Division Manager of the City of Austin Development Services Department.

Staff Recommendation:

Though zoning regulations may constitute a municipal ordinance, zoning regulates what purpose or use may be developed on the zoned area of land. It does not regulate the proximity of an off-site feature to the zoned property. Accordingly, zoning for multifamily, or zoning that allows for building multifamily residential development, is not “a local ordinance that regulates the proximity of such undesirable feature to a multifamily development that has smaller distances than the minimum distances noted below.”

However, 10 TAC §11.101(a)(2) states “[i]f a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility.” Tex. Health & Safety Code §382.05198(a)(19) references the 440 yard distance requirement being applicable “if the plant is located in an area that is not subject to municipal zoning regulation.” Indeed, though a hearing is required for numerous other aspects of a new permanent concrete bagging facility, for purposes of determining whether TCEQ “would require a new facility under its jurisdiction to have a minimum separation from housing,” and if TDHCA is to “defer” to its regulation, then it is clear that TCEQ would not require such separation if the plant is located in an area subject to municipal zoning regulation.

Accordingly, the existence of zoning that would allow for multifamily residential development, generally, does not constitute a local ordinance that regulates the proximity of an undesirable feature to a multifamily development. But, in the case of a concrete bagging facility nearby a development site, both of which are subject to municipal zoning regulation, Tex. Health & Safety Code §382.05198(a)(19) does not prescribe a minimum distance requirement.

This leaves the issue of the development site being within the 500 feet from heavy industry minimum distance in 10 TAC §11.101(a)(2)(F), where “heavy industry” is exemplified as “facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintain fuel storage facilities, excluding gas stations.” Applicant has responded to the description of the Custom Crete facility as “heavy industry” by including an aerial photograph and map of the two nearby concrete batching facilities in relation to the proposed development site, and a report from JE Acoustics, who concluded that the concrete facilities generated moderate noise levels less than 60 decibels relative to the development site.

It was noted that the truck entrance is less than 500 feet from the development site. The aerial photographs and maps submitted by the applicant leave a significant question as to whether the two concrete batching plants constitute “heavy industry” relative to the proposed development site. Dozens of large trucks appear in the photograph, and seem to use the road entrance and exit to the Custom Crete facility some 490 feet from the entrance to the development site. Whether the use of land and machinery is “extensive” is compounded by the fact that there are two concrete batching plants next to each other (Custom Crete and Centex Materials). Lastly, there appears to be no residential development closer to these facilities than the proposed development site.

Staff presents to the Board for its determination whether the Development Site is eligible regarding this issue.

Summary of Disclosure: Per 10 TAC §11.101(a)(2) of the QAP, if Department staff identifies what it believes would constitute an undesirable site feature not listed in that paragraph or covered under subparagraph (K) of that paragraph, staff may request a determination from the Board as to whether such feature is acceptable or not. Staff has identified the following language included in the ESA:

“Phase Engineering, Inc. has the opinion that based on laboratory results from the user provided Phase II report, the subject property exhibits impact from arsenic and lead in the soils evaluated. This represents a recognized environmental condition.”

Phase Engineering’s conclusion is that “the user provided prior Phase II ESA identified elevated metals in the near surface soils at concentrations greater than appropriate state environmental regulatory agency reporting limits.” The ESA states that the testing conducted in 2014 used an incorrect standard, but is not clear on the levels detected or mitigation requirements. The ESA does not state that no mitigation is necessary, and recommends further testing. There is no mention in the Application or Site Design and Feasibility Report of soil contamination, or of further testing and potential remediation costs. It is noteworthy that the Applicant stated there were no known chemicals present or spills on the property, despite providing the current ESA provider with the historic report that triggers this concern. Staff believes that such a disclosure constitutes an environmental factor that may adversely affect the health and safety of residents.

Staff Recommendation: Staff is recommending that the Board determine that the Development Site risks exposure to an environmental factor that may adversely affect the health and safety of the residents, pursuant to the requirements of 10 TAC §11.101(a)(2)(K), and finds the Site ineligible:

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated.

19180

St. Elmo Commons

Application Disclosure

19180 – St. Elmo Commons
4510 & 4514 Terry-O Lane, Austin, TX 78745

Disclosure of Undesirable Site Feature – 11.101(a)(2)(F):

Development Sites located within 500 feet of heavy industry (i.e. facilities that require extensive use of land and machinery, produce high levels of external noise such as manufacturing plants, or maintains fuel storage facilities (excluding gas stations));

The Development Site for St. Elmo Commons, located at 4510 & 4514 Terry-O Lane in Austin, Texas, is located within 500 feet of the property boundary line of Centex Materials located at 817 St. Elmo Road and Custom-Crete located at 4433 Terry-O Lane. As confirmed by TCEQ, both of these sites are permitted as concrete batch plants. Please see Attachment A containing a map of the two locations and their distance from the proposed Development Site. Please see Attachment B containing correspondence from TCEQ confirming the two plants as concrete batch plants. Please see Attachment C containing the air quality permits and back-up documentation per conversations with TCEQ.

The first course of mitigation for this Undesirable Site Feature was to identify whether the plants would adversely affect the health and safety of our future residents or render the Development Site inappropriate for housing use. Focusing on health and safety, we researched the impact these two sites would have on noise and air quality.

We engaged JEAcoustics -an experienced vibration, acoustic and noise engineer - to perform a noise study incorporating all nearby industrial sources. The noise study conclusions are detailed in the attached report as Attachment D. Summarily, the measurements and noise model indicate the industrial sources generate noise exposure less than 60 dBA (DNL) and pose no direct impact to the project.

JEAcoustics field research found the Custom-Crete plant operations generate moderate noise on the southwest part of the plant, as the louder parts of the operation such as batching hoppers and mixers are greater than 500 feet northeast of the site, and the main truck entrance is 490 feet north. The nearest parts of the plant are being used for storage and parking. The most common noises are compressed air puffs and truck traffic, which do not result in noise levels any greater than that of Terry-O Lane traffic.

Indirectly, there may be some plant contribution to the truck traffic on Terry-O Lane, but future 2029 traffic noise volume for cars, medium trucks, and heavy trucks indicate DNL 65, which is within the “acceptable” category. For comparison, a site 250 feet to 75 feet from interstate frontage lanes would be around 70 to 75 DNL, respectively, 5 to 10 dB louder than the site location for St. Elmo Commons.

The site location is zoned to allow multifamily development, and that zoning was already in place at the time of development site selection. Texas Commission on Environmental Quality (TCEQ) regulations mandate that safety and air quality controls be in place for industry and be maintained for the safety, security, and health of residential neighbors. We confirmed with TCEQ that the neighboring concrete batch plants do not pose an air quality risk to future residents. Centex Materials and Custom-Crete operations are in compliance with the TCEQ requirements and regulations and their associated permits.

TCEQ has verified that the two plant operations, operating under their standard exemptions, do not have a minimum distance requirement to any off-site receptors such as permanent residential or schools. TCEQ further clarified that, if a permit did require minimum distances from off-site receptors, that those distances would be applied at initial permit application, but once permit is issued, the distance to off-site receptors such as housing is no longer valid. A demonstration of how the facility would meet all state and federal air quality requirements was audited and verified by TCEQ staff prior to making a final decision on the permit applications for these two plants and no deterioration of air quality or health effects is expected.

We have also confirmed with the City of Austin that they do not mandate minimum distances from these types of operations – or vice versa - as long as zoning allows. This site is currently zoned multifamily and therefore this site is entitled to be developed as multifamily housing. Conversely, the two plant sites are zoned Industrial and therefore those sites could be developed as new concrete batch plants.

After completing our due diligence, we have concluded there is neither a noise nor air quality issue posed by the facilities, nor is there a question of conduciveness of the Development Site to housing. As further mitigation, the structures and entrances for our Development will be greater than 500 feet away from the hoppers on both of these sites – the main source of any potential air quality or noise generation. We will take additional measures to make sure all outdoor amenities and spaces are screened from the facilities by buildings or landscaping. We will also incorporate any measures recommended by the sound engineer to ensure quiet enjoyment of residential units.

We respectfully ask that the Board consider the above documentation and evidence of research and mitigation more than sufficient to find this Development Site eligible.

Attachment A Location Map



Gentex Materials

Custom-Crete

490 feet

620 feet

919 feet

mo Rd

Terry-O Ln

Google Earth™
Sheraton Ave

© 2018 Google

500 ft



Attachment B
TCEQ Correspondence

From: [Don Nelon](#)
To: jennifer@truecasa.net
Cc: [John Guttman](#); [Beryl Thatcher](#); [Bonnie Evridge](#)
Subject: RE: 4510 and 4514 Terry O-Lane
Date: Wednesday, February 06, 2019 8:54:51 AM

Ms. Hicks,

Please see the responses below. If you have any additional questions please contact me directly.

Don Nelon
512-239-0894

How is my customer service? Fill out our customer satisfaction survey at
www.tceq.texas.gov/customersurvey

From: jennifer@truecasa.net <jennifer@truecasa.net>
Sent: Tuesday, February 5, 2019 4:43 PM
To: AIRPERM <AIRPERM@tceq.texas.gov>
Cc: 'John Guttman' <jguttman@jesholdings.com>
Subject: 4510 and 4514 Terry O-Lane

I am seeking information on the requirements imposed on concrete batch plants as far as acceptable distances from residential. I am a consultant working with a developer who is proposing multifamily affordable housing on the vacant parcels located at 4510 and 4514 Terry-O Lane in Austin, Texas. The site is located near two different permitted locations:

1. 817 E. St. Elmo Road, Austin, TX – Centex Materials
Concrete Batch Plant
RN100250273
Permits: 13122 and 14416
2. 4433 Terry-O Lane, Austin, TX – RediMix (Custom Crete)
Proposed Concrete Batch Plant
Permit: 81085

Can you confirm the following?

- Does a Standard permit apply? The standard permit lists the only stipulated distance as the required 100 feet of hopper from property line? Any other residential distance requirements? (i.e. are there any TCEQ protocols specific to plan construction that disallows plant construction within a certain proximity to residential or single family?) **The two concrete batch plants operating under standard exemptions 13122 and 14416 do not have a minimum distance requirement to any off site receptors such as a permanent residence or school.**
- We found the attached in our research, but are not thinking it applies to either one of these plant facilities? **The attachment referencing statute 382.05198 is for a specific concrete batch plant authorized by that statute and does not apply to either of these sites.**
- For 4433 Terry-O Lane, do you know if there is a plan to build a concrete batch plant on that

site as it doesn't appear that there is one in operation there right now? We do not have any pending applications for this location and any possible future additions would be a decision made by the owner/operator. This site is considered a bulk mineral handling facility authorized by construction permit 81085. There are no off site distance requirements for this permit. During the application review the applicant was required to demonstrate how this facility would meet all state and federal air quality requirements. This demonstration was audited and verified by TCEQ staff prior to making a final decision on the application.

In both cases, if the owner/operator operates their facilities in accordance to the requirements of their respective authorization, we would not expect any deterioration of air quality or health effects. If there were any off site distance requirements for a specific permit, those distance requirements would had to be met at the time of permit application. Once a permit has been issued, the distance requirement is no longer valid for any new off site receptors such as housing.

Please let me know if I have not answered your questions or if you have additional questions.

We very much appreciate your help in answering these questions or providing additional guidance. We not only want to make sure our site is a safe location for families, but also ensure that we understand what the plant location requirements are (even if they are in existence already.) The Texas Dept of Housing and Community Affairs will be a funder for this project and will ask all of these questions and therefore we are trying to be prepared with our due diligence.

We thank you much!

You can reach me per the contact info below.

Best,
Jennifer Hicks

Jennifer Hicks, Founder
True Casa Consulting, LLC
512.203.4417 mobile
www.truecasa.net

No details were identified in connection with this finding during interviews and/or inquiries conducted for this assessment.
See Section 7.0 for more information regarding interviews and inquiries conducted during this assessment.

OPINION

Phase Engineering, Inc. has the opinion that based on direction and lack of reported releases, this facility has not likely impacted the subject property.
This does not represent a recognized environmental condition at this time.

FINDING

The subject property contains miscellaneous debris.

Standard Environmental Record Sources, Federal, State & Tribal

No regulatory agency listings were found in connection with this finding.
See Section 5.1 for more information regarding the regulatory agency documentation reviewed during this assessment.

Records Review

A Limited Phase II was conducted on the subject property on July 9, 2014 by URS Corporation. This investigation was conducted to address two environmental concerns; drainage onto the subject property from adjacent industrial sites; and potential contamination from uncharacterized fill material and widespread material dumping onsite which was observed during a prior 2004 site investigation. Two surficial soil samples were collected from the western portion of the subject property to evaluate the possible impact of surface water runoff from adjacent industrial parcels and two soil samples were collected centrally on the subject property to evaluate the potential impacts from unidentified fill materials. No VOCs or PAHs were detected above the laboratory method reporting limits in the soil samples collected. Elevated concentrations of certain heavy metals including lead and arsenic were detected in the soil samples collected. No additional assessments activities were recommended by the consultant.

It should be noted that the consultant (URS) compared the laboratory results for the heavy metals detected during the assessment to incorrect TRRP PCLs. The TRRP PCLs utilized by URS were for the Class 3 Groundwater Soil to Groundwater exposure pathway (^{GW}SOIL_{CLASS3}). The appropriate TRRP PCLs that the results must be initially compared to is the generic Soil to Groundwater pathway (^{GW}SOIL_{ING}). The Class 3 TRRP Soil PCLs used are 100 times the generic Soil to Groundwater PCLs. The TCEQ must approve designation of a property to utilize Class 3 PCLs that would include groundwater sampling / analysis, demonstration of a limited daily yield less than 150 gallons per day and/or presence of undesirable groundwater characteristics such as highly elevated total dissolved solids. No indication of groundwater analysis was identified in the URS Phase II report and the lead and arsenic concentrations were detected at levels well above the appropriate PCLs (5.0 or 5.9 mg/Kg for arsenic and 3.0 or 15.0 mg/Kg for lead).

See Section 5.4 for more information regarding historical sources reviewed during this assessment.

Site Reconnaissance

Used tires and miscellaneous trash was observed at the subject property during the site visit.
See Section 6.0 for more information regarding observations noted during the site reconnaissance.

Interviews and/or Inquiries

No details were identified in connection with this finding during interviews and/or inquiries conducted for this assessment.

See Section 7.0 for more information regarding interviews and inquiries conducted during this assessment.

OPINION

Phase Engineering, Inc. has the opinion that based laboratory results from the user provided Phase II report, the subject property exhibits impact from arsenic and lead in the soils evaluated. This represents a recognized environmental condition.

1.4 Conclusions

Phase Engineering, Inc. has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527-13 of subject property and more fully described within the report. Any exception to, or deletions from, this practice are described in Section 2.0 of the report.

Recognized environmental condition is defined in ASTM Standard E 1527-13 as “the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.” Phase Engineering, Inc. has considered all migration pathways including soil, groundwater and vapor during evaluation of all identified environmental conditions. This assessment has revealed no evidence of recognized environmental conditions in connection with the property., except for the following:

- The user provided prior Phase II ESA identified elevated metals in the near surface soils at concentrations greater than appropriate state environmental regulatory agency reporting limits.

A controlled recognized environmental condition (CREC) is defined in ASTM Standard E 1527-13 as “a recognized environmental condition resulting from a past release of hazardous substances or petroleum products that has been addressed to the satisfaction of the applicable regulatory authority with hazardous substances or petroleum products allowed to remain in place subject to the implementation of required controls.” Controlled recognized environmental conditions are recognized environmental conditions. This assessment has revealed no evidence of controlled recognized environmental conditions in connection with the property.

A historical recognized environmental condition (HREC) is defined in ASTM Standard E 1527-13 as “a past release of any hazardous substances or petroleum products that has occurred in connection with the property and has been addressed to the satisfaction of the applicable regulatory authority or meeting unrestricted use criteria established by a regulatory authority, without subjecting the property to any required controls.” A historical recognized environmental condition is not a recognized environmental condition. This assessment has revealed no evidence of historical recognized environmental conditions in connection with the property.

De minimis conditions are defined in ASTM Standard E 1527-13 as conditions “that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies.” *De minimis* conditions are not recognized environmental conditions. This assessment has revealed no evidence of *de minimis* conditions in connection with the property.

1.5 Recommendations

Recommendations
<p>The following recommendation is made with respect to the environmental aspects of the subject property:</p> <p>A Phase II Environmental Site Assessment is recommended to investigate the potential soil and groundwater impact due to the identified recognized environmental condition(s).</p>

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action on staff determinations regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features for 19185 Edgewood Villas

RECOMMENDED ACTION

WHEREAS, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, Development Sites within the applicable distance of any of the identified undesirable features will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility;

WHEREAS, for the items requiring disclosure under 10 TAC §11.101(a)(2), staff received such a disclosure for Edgewood Villas (19185); and

WHEREAS, staff has conducted a further review of the proposed Site and the surrounding neighborhood pursuant to 10 TAC §11.101(a)(3) and prepared a summary for the Board;

NOW, therefore, it is hereby,

RESOLVED, that the Board determine that the site is ineligible in accordance with 10 TAC §11.101(a)(2) of the Qualified Allocation Plan for Edgewood Villas (19185).

BACKGROUND

Pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan (QAP) related to Undesirable Site Features, Development Sites within the applicable distance of any of the undesirable features identified in the paragraph will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility.

Per 10 TAC §11.101(a)(2), the Department's Governing Board has final decision making authority in making an affirmative determination or finding the site ineligible. Development Sites within the applicable distance of any of the undesirable features identified in the rule will be considered ineligible unless it is determined by the Board that information regarding mitigation of the applicable undesirable site feature(s) is sufficient and supports Site eligibility. Should the Board

make the determination that a Development Site is ineligible, the termination of the Application resulting from such Board action is final and not subject to further appeal.

Summary of Disclosure: The Applicant has disclosed neighboring noise associated with military exercises at Fort Hood. Edgewood Villas is a proposed Elderly development that will be located near the northeast corner of Bills Road and N. 60th Street in Killeen. The Development Site is proximate to training areas on Fort Hood. Per the ESA, "the Phantom Run Range is located just to the north of the subject property and impacts the property."

The Applicant retained Phase Engineering to conduct the Environmental Site Assessment for the Development Site. Phase Engineering found levels of noise that are from close proximity to Fort Hood. According to the ESA, the army uses different, but comparable, noise measures to HUD's Day Night Noise Levels (DNL). First, Fort Hood has both a Larger Caliber Noise (CDNL) contour map and, second, Fort Hood has a noise measure pertaining to small caliber firing ranges, commonly referred to as "Small Arms PK 15."

Because these two military-based noise measures are comparable to HUD's standards, it is helpful to review HUD's noise standards in 24 CFR Part 51, Subpart B. For proposed new construction in high noise areas, the project must incorporate noise mitigation features. Consideration of noise applies to the acquisition of undeveloped land and an existing Development as well. All sites whose environmental or community noise exposure exceeds the DNL of 65 decibels (dB) are considered noise-impacted areas. The "Normally Unacceptable" noise zone includes community noise levels from above 65 decibels to 75 decibels. For developments that fall under HUD's noise standards, proposed development sites that fall within this zone must mitigate that excess noise. Locations with DNLs above 75 dB have "Unacceptable" noise exposure. In "Unacceptable" noise zones, HUD strongly encourages conversion of noise-exposed sites to land uses compatible with the high noise levels, and not to develop residential housing.

For the military standard CDNL noise, the proposed Development Site is outside of the 65-70 dB CDNL noise contour, meaning that the proposed Development Site is acceptable for housing. However, for Small Arms PK-15 noise, the proposed Development Site, according to the ESA, lies within a zone where decibels can range from 87 to as high as 104 dB which is 60% above the acceptable HUD noise levels. The ESA notes that the Department of Defense uses a higher threshold for determining the effects of PK-15 noise, but does note that residents will hear gunfire when military training is occurring:

"According to guidance tables by the U.S. Army Public Health Command, PK15 sound levels less than 115dB are audible, however there is low potential for annoyance to the local community. Noise exposure at the subject property may vary in duration and/or loudness; however, future residents will likely be aware when active training is underway" (Page 48 of the ESA).

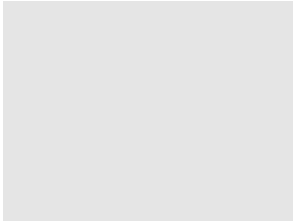
The ESA states that "[t]he noise environment for the subject property is likely to be considered "Normally Unacceptable" due to the proximity to Fort Hood and would benefit from noise mitigation measures such as an increase in sound attenuation within the proposed building envelope." To reduce the high estimate of possible dB from 104 to the acceptable level of 64, the Applicant would have to achieve a noise level reduction ("NLR") of 40 dB, which may be

infeasible, given that the Applicant's ESA states that "normal permanent construction can be expected to provide a NLR of 20 dB . . ." (page 17 of the Full Application).

Staff has attached an article describing the activities held at Phantom Run, which implies that the purpose of Phantom Run is to replicate real-world battles and gun fights that soldiers may face in conflict. Using Google Earth, staff determined that the edge of the proposed Development Site is approximately 1,440 feet from the first noticeable structure of Phantom Run. It is approximately 1,750 feet from the center of the training facility.

Staff Recommendation: Staff is recommending that due to the risk of the excessive noise associated with gunfire and explosives that ranges from 87 to 104 dB, the Board determine that the Development Site risks exposure to an environmental factor that may adversely affect the health and safety of the residents, pursuant to the requirements of 10 TAC §11.101(a)(2)(K), and finds the Site ineligible:

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated.



410th MPs demonstrate Phantom Run IED lanes

Pfc. Candace Mundt, 89th MP Bde. PAO Feb 12, 2009

Soldiers of the 410th Military Police Company participated in a training demonstration Jan. 30 at the Phantom Run Improvised Explosive Device Lanes in preparation for their upcoming deployment

The demonstration, attended by more than 30 Texas legislators and their staff members touring Fort Hood, displayed the police transitions team's escalation of force, counter attack and station defense skills.

"The training is being used to show the legislators what kind of capabilities for training Fort Hood has, and it was our pleasure to show them," said 2nd Lt. Alan Schano, platoon leader, 410th MP Co. "This Military Operations on Urban Terrain site is a prime example with a lot of details."

"They've got a little Iraqi village setup and good pyrotechnics for the explosions," said 1st Lt. Jon Walter, plans officer for 720th Military Police Battalion.

Walter coordinated the training between 410th MP Co., 720th MP Bn., 89th Military Police Brigade and III Corps.

The 410th MP Co. was the first group to run on the brand new training site, named "Basrah Baghdad," Schano said.

From the Iraqi actors and explosions to a fully-stocked town market, the realism of the training reminded many

of what they had seen overseas.

“Soldiers already deployed said it is very reminiscent of the environment down range,” Schano said. “It is designed very well for the fulfillment of MP missions in Iraq.”

“Besides the bullets, it’s pretty dead on,” said Spc. Antonio McCullen, combat medic with 410th MP Co., who has previously deployed. “I wish I had it before my first deployment.”

Soldiers who have not yet deployed felt the training’s accurateness will help them a lot during deployment.

“With the big scenarios, explosions going off, and the civilians dressed up, it really got my adrenaline pumping,” said Cpl. Curtis Derrick, 410th MP Co.

It took a lot of preparation to get the training as realistic as possible.

“We started planning for this range right before Christmas,” said Ben Davis, Fort Hood Training Integrator.

“We are starting on a smaller village a week from this Monday.”

“We sit down with unit commanders , design and develop training for the Global War on Terrorism,” Davis said.

Training coordinators are passionate about giving Soldiers the best practice time they can get before they do the real thing.

“The first 100 days down range are the most intense as the Soldiers are trying to climatize and get used to the area,” Davis said. “We try to take those 100 days and let them make mistakes here instead of Iraq or Afghanistan. It’s an eye opener.”

“As they go along, they’ve gotten better,” Davis said. “Mistakes that they make, they’re not making them again.”

Overall, with the week they spent at the IED lanes, soldiers of the 410th MP Co. learned a lot about completing their mission overseas and about working as a team.

“It’s an outstanding learning experience as pretty much everything is,” Schano said. “It’s exciting to see the platoon develop, mature and become more capable.”

19185
Edgewood Villas

Application #19185 Edgewood Villas

Undesirable Site Features Disclosure

Edgewood Villas (the “**Apartment Development**”) is a proposed Elderly development that will be located near the NEC of Bills Rd and N. 60th St., Killeen, Texas 76543 (the “**Development Site**”). Pursuant to §11.101(a)(2) of the Multifamily Rules, Edgewood Villas 19, LP (the “**Applicant**”) is disclosing the following Undesirable Site Features:

(K) Any other Site deemed unacceptable, which would include, without limitation, those with exposure to an environmental factor that may adversely affect the health and safety of the residents or render the Site inappropriate for housing use and which cannot be adequately mitigated.

Phase Engineering has completed the Environmental Site Assessment for the Development Site and found levels of noise that are from the close proximity to Fort Hood. TDHCA has adopted HUD standards for noise studies as well as the levels that make a site unacceptable for housing. Phase Engineering has concluded that the noise levels at the Development Site would fall into the HUD category of normally unacceptable. This noise description by HUD allows for housing as long as noise mitigation measures are undertaken. The Applicant commits to noise mitigation to bring the Apartment Development into compliance with federal guidelines.

Noise Measurements

When HUD uses noise levels to evaluate the suitability of housing at a site they employ Day Night Noise Levels (“DNL”) which not only evaluates the decibel (“db”) level of the sound but also the frequency and the timing, giving more weight to noise that occurs at night. When measuring sound from munitions the army uses two different measures, Concussive Day Night Noise Levels (“CDNL”) and decibel peak (“PK 15”). CDNL is a similar measure to DNL because it is weighted and it is specific to concussive noises. HUD allows CDNL measures to be used in evaluating site suitability. PK 15 is a measure of a loud noise that does not last more than a second. HUD does not use this measure because it does not take into account frequency which is an important aspect in evaluating site suitability. The Fort Hood Joint Land Use Study measures both large caliber artillery noise and small caliber firearms noise as it relates to the Development Site.

Large Caliber Noise

The 2017 Fort Hood Joint Land Use Study includes a CDNL noise contour map for large caliber noise (**See 2017 ICUS Large Caliber Noise Zones (CDNL) attached- Exhibit 1**). This CDNL noise contour map shows the Development Site is far outside the 65-70 db CDNL noise contour. For HUD purposes anything below the 65 db DNL is acceptable for housing. This contour map shows that the Development Site is suitable for housing.

Small Caliber Firing Range-Phantom Run

The noise from Fort Hood attributed to Small Caliber firing is harder to measure using HUD standards because no CDNL contour maps are available. The only available data is db PK 15 noise contour mapping. HUD does not have guidance on the effects of db PK 15 sound levels on the suitability of

housing. This is because db PK noise is unweighted so it does not have a strong correlation to quality of life as frequency is not taken into account. As TDHCA and HUD both do not have guidance on this issue it is difficult to evaluate the Development Site. However, §11.101(a)(2) allows the Applicant to utilize the guidance from a state or federal agency when dealing with the required separation from an undesirable site feature.

If a state or federal cognizant agency would require a new facility under its jurisdiction to have a minimum separation from housing, the Department will defer to that agency and require the same separation for a new housing facility near an existing regulated or registered facility. In addition to these limitations, a Development Owner must ensure that the proposed Development Site and all construction thereon comply with all applicable state and federal requirements regarding separation for safety purposes.

Our site falls into the 87-104 dB Small Arms PK 15 which places it into Noise Zone II for the purposes of small caliber noise. **(See Small Arms Noise Contour Map attached- Exhibit 2)** The federal guidelines do not specify a specific distance for separation, however they establish Noise Zones that are defined by the db PK 15 noise contour maps. The Noise Zones have guidance on land use and development that is acceptable within their boundaries. The Development Site falls into Small Arms Noise Zone II which allows housing but recommends mitigation. We request that this standard be used when evaluating the Development Site. Below are the Department of Defense guidelines for land use in Noise Zone II:

Where the community determines that these uses [housing] must be allowed, measures to achieve an outdoor to indoor noise level reduction (NLR) of at least 25 dB to 30 dB in Noise Zone II, from small arms and aviation noise, should be incorporated into building codes and be in individual approvals. The NLR for communities' subject to large caliber weapons and weapons system noise is lacking scientific studies to accomplish the recommended NLR. For this reason, it is strongly discouraged that noise-sensitive land uses be allowed in Noise Zone II from large caliber weapons. Normal permanent construction can be expected to provide a NLR of 20 dB, for aircraft and small arms, thus the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation, upgraded Sound Transmission Class (STC) ratings in windows and doors and closed windows year round...
...However, building location and site planning, and design and use of berms and barriers, can help mitigate outdoor noise exposure NLR particularly from ground level aircraft sources. **(See Department of Defense Environmental Protection and Enhancement EBook attached- Exhibit 3).**

In the case of our site in Killeen it becomes a community decision whether to move the site forward, and since the city has put a priority on development on the north side of town, with proper noise mitigation, this site is a vital step forward in development in that area. Also, because of the particularly low density of the development, 7.5 units per acre, this development should be able to meet all necessary requirements.

Conclusion

As our site does not fall into Noise Zone II for small arms there is nothing that should preclude its development as multifamily housing. Further, the city council has identified our site as a community need by issuing their resolution of support in favor of this site and its use as elderly affordable housing. Finally, there are many single-family homes on small lots that fall into the same Noise Zone II category from Fort Hood, which shows that we are a compatible use as well. The Applicant is committed to noise mitigation at the Development Site and has designed the Apartment Development to place the pool and outdoor congregation areas in the interior courtyard of our two-story apartment buildings. Also, the placement of the structures is to the south of the Development Site, further away from Fort Hood. The Applicant will provide noise attenuation through certain building designs and construction techniques which are approved by HUD such as use of triple-pane windows, higher density insulated frame material, enhanced wall construction (i.e. a second layer of drywall) on exterior walls and staggered stud wall design.

Exhibit 1: Large Caliber CDNL Noise Contours

2017 ICUZ
Large Caliber Noise Zones
(CDNL)

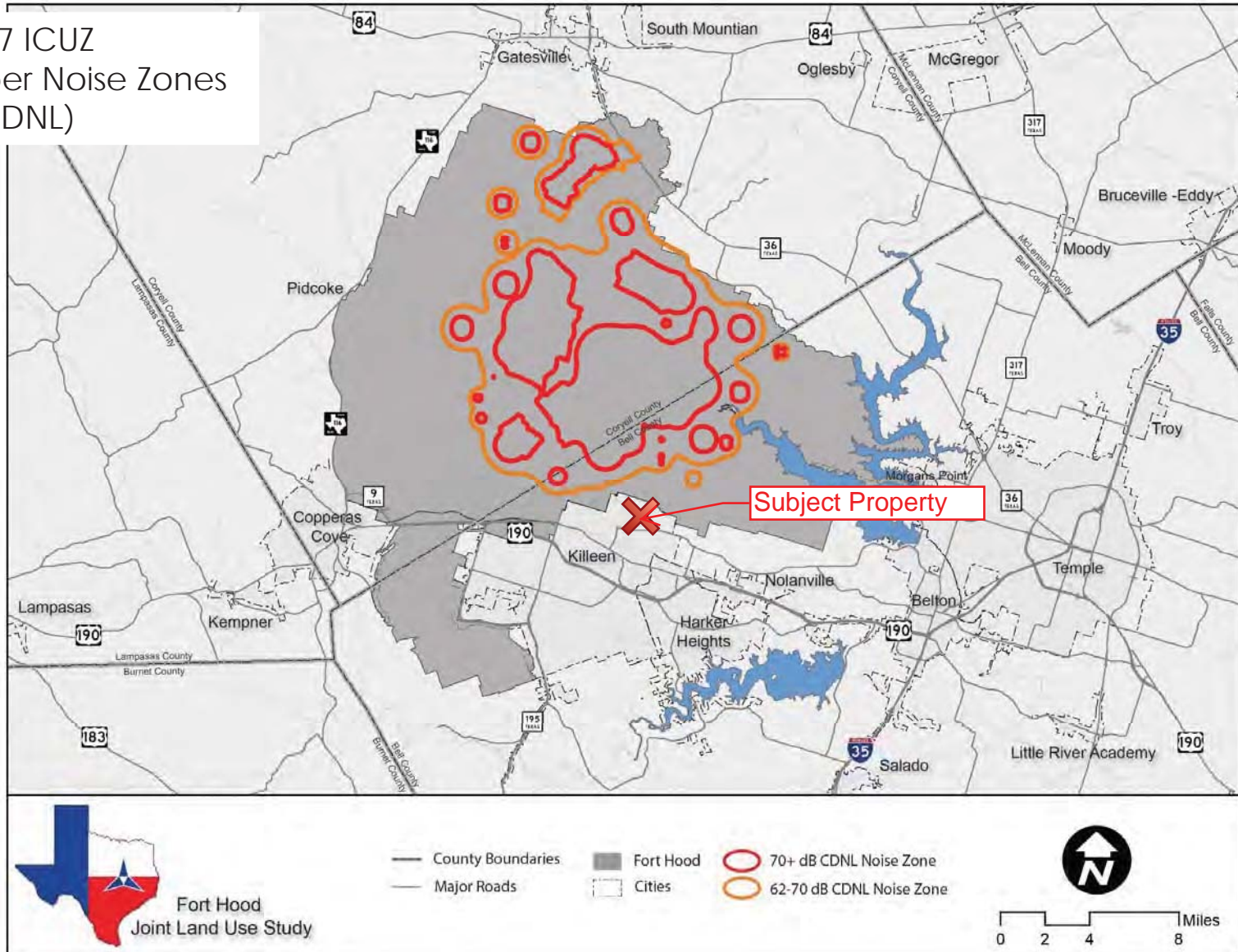


Exhibit 2: Small Arms PK 15 Noise Contours FORT HOOD PROFILE

▼ MAP 3.5 TA-40 AND PHANTOM RUN SMALL ARMS NOISE CONTOURS

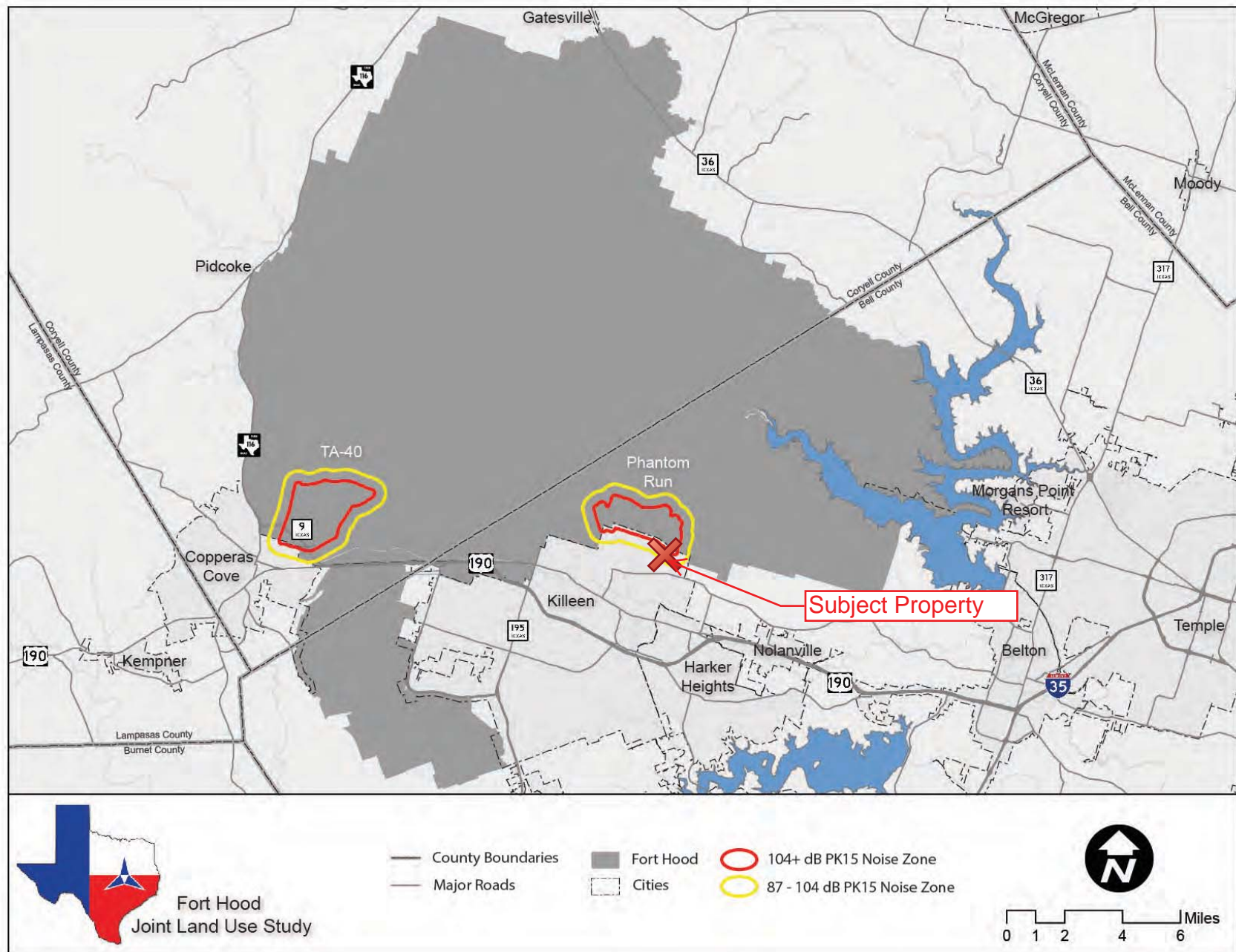


Exhibit 3: Department of Defense EBook

b. Address issues concerning building vibration and rattle due to weapons blast through the appropriate subject matter experts and legal counsel.

c. Address noise impacts on domestic animals and wildlife, as required, through the study of each species' response or a surrogate response to noise. The noise levels set forth herein apply to humans only and do not apply to domestic animals or wildlife.

Table 14-1
Noise Limits for Noise Zones

Noise zone	Noise limits (dB)	Noise limits (dB)	Noise limits (dB)
	Aviation ADNL	Impulsive CDNL	Small arms — PK 15(met)
LUPZ	60 - 65	57 - 62	N/A
I	< 65	< 62	<87
II	65 - 75	62 - 70	87 - 104
III	>75	>70	>104

Legend for Table 14-1:
 dB=decibel
 LUPZ=land use planning zone
 ADNL=A-weighted day-night levels
 CDNL=C-weighted day-night levels
 PK 15(met)=Single event peak level exceeded by 15 percent of events
 <=less than
 >=greater than
 N/A=Not Applicable

Table 14–2
Risk of Noise Complaints by Level of Noise

Risk of Noise complaints	Large caliber weapons noise limits (dB) PK 15(met)
Low	< 115
Medium	115 - 130
High	130 - 140
Risk of physiological damage to unprotected human ears and structural damage claims	> 140

Legend for Table 14-2:

dB = decibel

PK 15(met) = Single event peak level exceeded by 15 percent of events

Notes:

¹ Although local conditions regarding the need for housing may require noise-sensitive land uses in Noise Zone II, on or off post, this type of land use is strongly discouraged. The absence of viable alternative development options should be determined and an evaluation should be conducted locally prior to local approvals indicating that a demonstrated community need for the noise-sensitive land use would not be met if development were prohibited in Noise Zone II.

² Where the community determines that these uses must be allowed, measures to achieve an outdoor to indoor noise level reduction (NLR) of at least 25 dB to 30 dB in Noise Zone II, from small arms and aviation noise, should be incorporated into building codes and be in individual approvals. The NLR for communities subject to large caliber weapons and weapons system noise is lacking scientific studies to accomplish the recommended NLR. For this reason it is strongly discouraged that noise-sensitive land uses be allowed in Noise Zone II from large caliber weapons.

³ Normal permanent construction can be expected to provide a NLR of 20 dB, for aircraft and small arms, thus the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation, upgraded Sound Transmission Class (STC) ratings in windows and doors and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.

⁴ NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, and design and use of berms and barriers, can help mitigate outdoor noise exposure NLR particularly from ground level aircraft sources. Barriers are generally not effective in noise reduction for large arms such as artillery and armor, large explosions, or from high-level aircraft sources.

Chapter 15

Program Management and Operation

15–1. Structure and resourcing

a. Army Environmental Funding Policy.

(1) Army organizations are responsible for addressing environmental requirements for activities under their purview to ensure timely compliance with legal mandates, and for sustaining environmental stewardship.

(2) Environmental requirements must be funded from the appropriate account of the proponent who has the

7f

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

7g

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JUNE 27, 2019

Presentation, discussion, and possible action to issue a list of approved Applications for 2019 Housing Tax Credits (HTC) in accordance with Tex. Gov't Code §2306.6724(e)

RECOMMENDED ACTION

WHEREAS, in accordance with Tex. Gov't Code §2306.6724(e), the Board shall review the recommendations of Department staff regarding applications and shall issue a list of approved applications each year in accordance with the Qualified Allocation Plan (QAP) not later than June 30;

WHEREAS, not all applications on the approved list have completed the review process in accordance with the QAP, not all application's appeal rights have concluded, and not all applications will ultimately receive an award of housing tax credits;

WHEREAS, the list, as orally revised to reflect the determinations by the Board of any appeals or other actions taken at this Board meeting of June 27, 2019, constitutes the complete list of approved applications that may therefore be eligible for commitments of allocations of housing tax credits in this competitive cycle; and

WHEREAS, a list reflecting such Board determinations at the June 27, 2019, meeting, will be issued not later than June 30, 2019;

NOW, therefore, it is hereby

RESOLVED, the attached list of active applications for the 2019 competitive HTC application round, as orally modified to reflect actions taken at this Board meeting, is approved in accordance with Tex. Gov't Code §2306.6724(e), subject to meeting the requirements of the Qualified Allocation Plan (QAP) and associated applicable rules.

BACKGROUND

The Department's Board is required by Tex. Gov't Code §2306.6724(e) to "review the recommendations of department staff regarding applications and shall issue a list of approved applications each year in accordance with the qualified allocation plan not later than June 30."

Moreover, as required by Tex. Gov't Code §2306.6724(f), the Board “shall issue final commitments for allocations of housing tax credits each year in accordance with the qualified allocation plan not later than July 31.” At the Board meeting of July 25, 2019, the list presented to the Board will clearly identify those applications being recommended for a Commitment.

One-hundred thirty-four competitive (9%) HTC applications were submitted prior to the application deadline of March 1, 2019. To date, seven applications have been withdrawn or terminated. Applications that may be ineligible for an award due to the requirements of Tex. Gov't Code Section 2306.6711(f) related to the “Two Mile Same Year rule,” and/or Tex. Gov't Code Section 2306.6711(h) related to developments reserved for elderly persons, are included in this list with their status identified.

This is the “list of approved applications” required by Tex. Gov't Code §2306.6724(e). They are approved in the sense that they have not yet been identified as having any material deficiency or other defect that would cause them to be ineligible, or if such matters have been identified they are still within the period where such matters may be appealed. As provided by 10 TAC §11.6(3) of the QAP, Award Recommendation Methodology, the Department will not perform a detailed review of all applications; it reviews priority applications that are most likely to be competitive. Priority applications are identified based on self-score, a limited preliminary review, and other relevant factors, such as outcome of awards based on collapses. As staff continues the review process, applications remain subject to the identification of material and/or administrative deficiencies, revised scoring, and/or applications may be found to be ineligible or to involve ineligible applicants.

The attached list includes the current score for each active application as well as relevant application information. Those applications that have received a final scoring notice are identified in the “Review Status” column with a “C,” indicating that a complete program review has been completed. Those applications that are currently under review are identified with a “UR” and those with an “N” have not been prioritized for review.

At this time, applications may remain subject to underwriting, completion of any remaining program review, and a previous participation review, including the opportunity to pursue the appeal process, where applicable. Further, the credit amount reflected on this list is the requested credit amount and may change to reflect a recommended credit amount and/or may have conditions placed on the award in July, if recommended for an award. Information about completed underwriting reviews may be found at the Real Estate Analysis webpage <http://www.tdhca.state.tx.us/rea/reports-9-percent.htm>. In addition to applications that may be removed from the list for issues of financial feasibility, applications may also be removed from the list of approved applications as determinations are made on appeals, as applications make determinations regarding the credit award limit of \$3 million (in accordance with §11.4 of the QAP), or as the Board determines under operation of rule or law.

Staff recommends the Board approve the attached list of active applications for the 2019 competitive HTC application round, as orally modified to reflect Board determinations on any related actions taken at this meeting.

Application Number	Development Name	Development Address	City	ETJ	ZIP Code	County	Region	Urban/Rural	At-Risk	USDA	Nonprofit	Construction Type	Low-Income Units	Market Rate Units	Total Units	Target Population (Supp. Hsg. = SH)	HTC Request	Direct Loan Section 811	Applicant Contact Name	Census Tract(s)	Self Score Total	\$11.9(c)(8)	\$11.9(d)(1)	\$11.9(d)(4)	\$11.9(d)(5)	\$11.9(d)(6)	\$11.9(d)(7)	Best Possible Score	10 TAC 11.7(1) Part 1	10 TAC 11.7(1) Part 2	10 TAC 11.7(2)	Status	Review Status	Underwriting Status		
Region 8/Rural																																				
19238	Franklin Trails	W. Decherd St., W of Hearne St	Franklin		77859	Robertson	8	Rural				NC	38	0	38	Elderly	\$495,000	x	Michael Fogel	48395960300	117	0	17	4	8	4	0	150	12.5	3080		Priority	C	UR		
19237	Gatesville Trails	3807 S. Hwy 36	Gatesville	x	76528	Coryell	8	Rural				NC	48	0	48	Elderly	\$975,749		Michael Fogel	48099010400	117	0	17	4	8	4	0	150	10.7	3627			C			
Estimated Amount Available to Allocate		\$662,403																																		
													Total HTCs Requested		\$1,470,749																					
Region 8/Urban																																				
19166	Villas at Robinett	~SEC of Robinett Rd./W. Elms R	Killeen		76549	Bell	8	Urban				NC	91	13	104	Elderly	\$1,500,000		Donna Rickenbacke	48027023108	122	0	17	4	8	4	0	155	11.4%	198	N/A	Priority	C	UR		
19063	Residences at Lake Waco	1700 W State Hwy 6	Waco		76712	McLennan	8	Urban				NC	103	11	114	Elderly	\$1,500,000		Jeremy Mears	48309002503	122	0	17	4	8	4	0	155	3.8%	2112	N/A			UR		
19185	Edgewood Villas	~NEC N 60th St and Bills Rd	Killeen		76543	Bell	8	Urban				NC	85	5	90	Elderly	\$1,440,217	x	Ryan Hudspeth	48027022105	122	0	17	4	8	4	0	155	15.1%	3773	N/A			N	N	
19148	Reserve at Lake Shore	NEC 19th and Lake Shore Dr.	Waco		76708	McClennan	8	Urban				NC	77	9	86	General	\$1,500,000	x	Brian McGeady	48309003000	122	0	17	4	8	4	0	155	16.1%	N/A	N/A			N	N	
19026	Nat'l Church Residences-Robinson	~510 N. Old Robinson Rd.	Robinson		79706	McLennan	8	Urban				NC	90	10	100	Elderly	\$1,500,000		Tracey Fine	48309003703	120	0	17	4	8	4	0	153	12.1%	N/A	N/A			N	N	
19164	Commerce Street Apartments	Commerce St., S of Sparta Rd.	Belton		76513	Bell	8	Urban				NC	75	5	80	General	\$1,500,000	x	Emanuel H. Glockzir	48027021700	119	0	17	4	8	4	0	152					N	N		
Estimated Amount Available to Allocate		\$1,898,913																																		
													Total HTCs Requested		\$8,940,217																					
Region 9/Rural																																				
19304	The Residences at Overlook Ridge	S Side of FM 306, E of Maricopa Canyon Lake			78133	Comal	9	Rural				NC	30	0	30	Elderly	\$600,000	x	Sally Roth	48091310606	120	0	17	4	8	4	0	153	11.9%	1588	N/A	Priority	C	UR		
19030	Freedom's Path at Kerrville II	3602 Memorial Blvd.	Kerrville		78028	Kerr	9	Rural	x			NC	38	0	38	Sup Hsg	\$600,000	x	Gary Noller	48265960100	120	0	17	4	8	4	0	153	14.8%	2262	N/A			UR		
19191	Hillcrest Senior Village	160 & 170 Lehmann Dr.	Kerrville	x	78028	Kerr	9	Rural				NC	38	0	38	Elderly	\$855,246	x	Brian Kimes	48265960402	119	0	17	4	8	4	0	152					N	N		
Estimated Amount Available to Allocate		\$600,000																																		
													Total HTCs Requested		\$2,055,246																					
Region 9/Urban																																				
19133	Alazan Lofts	Scattered sites at El Paso St/Col	San Antonio		78207	Bexar	9	Urban	x			NC	80	8	88	General	\$1,500,000	x	Jason Arechiga	48029110500	118	0	17	4	8	4	7	158					Priority	C	UR	
19136	Luna Flats	4415 San Pedro Avenue	San Antonio		78212	Bexar	9	Urban				NC	69	0	69	General	\$1,500,000	x	Jason Arechiga	48029190603	120	0	14	4	8	4	7	157	22.4%	N/A	2.54 mi	Priority	C	UR		
19134	Village at Nogalitos	3727 Nogalitos St.	San Antonio		78211	Bexar	9	Urban	x			NC	78	0	78	General	\$1,400,000	x	Cindy Marquez	48029150501	120	0	14	4	8	4	7	157	27.5%	N/A	1.09 mi	Priority	C	UR		
19139	Hamilton Wolfe Lofts	Hamilton Wolfe Rd./Princeton f	San Antonio		78240	Bexar	9	Urban				NC	74	0	74	General	\$1,500,000	x	Henry R. Munoz III	48029181403	122	0	14	4	8	4	0	152	4.9%	106	N/A			UR		
19039	Blue Oaks	~ 4501 Thousand Oaks Dr.	San Antonio		78233	Bexar	9	Urban				NC	74	6	80	General	\$1,500,000	x	Scott Macdonald	48029121206	122	0	14	4	8	4	0	152	6.6%	1059	2.56 mi			N	N	
19003	The Legacy at Piedmont	826 E Highland Blvd	San Antonio		78210	Bexar	9	Urban				NC	49	0	49	Elderly	\$1,213,281		Dan Wilson	48029140400	120	0	14	8	8	0	7	157	2 mile same year conflict with 19013				N	N		
19132	Village at Boyer	1510 Hoefgen Avenue	San Antonio		78210	Bexar	9	Urban	x			NC	86	0	86	General	\$1,500,000	x	Jerry Du Terroil	48029140200	118	0	14	8	8	0	7	155	2 mile same year conflict 19003, 19013				N	N		
19062	Residences at Thousand Oaks	4500 blk Thousand Oaks Dr	San Antonio		78233	Bexar	9	Urban				NC	90	6	96	General	\$1,500,000	x	Jeremy Mears	48029121206	122	0	14	4	8	4	0	152	2 mile/proximity conflict with 19039				N	N		
19013	Our Lady of Charity Apartments	SEQ Montana St. and S. Grimes	San Antonio		78203	Bexar	9	Urban	x			NC-ADR	72	0	72	General	\$945,857	x	Lucila Diaz	48029130500	111	0	14	8	8	0	7	148	Terminated - Pending Appeal				C			
Estimated Amount Available to Allocate		\$5,444,901				Elderly Max \$2,323,825																														
													Total HTCs Requested		\$12,559,138																					
Region 10/Rural																																				
19256	Beeville Springs	E of Hwy 351/Across from Lehn	Beeville		78102	Bee	10	Rural				NC	33	5	38	General	\$645,769		Jeff Beaver	48025950400	120	5	17	4	8	4	0	158						UR		
Estimated Amount Available to Allocate		\$654,654																																		
													Total HTCs Requested		\$645,769																					
Region 10/Urban																																				
19332	Avanti at South Bluff	509 S. Carancahua St.	Corpus Christi		78401	Nueces	10	Urban				Recon	42	0	42	Elderly	\$925,000	x	Henry Flores IV	48355001200	80	0	17	4	8	4	7	120					Priority	C	C	
19367	Avanti Legacy Bayside	5300 Block of Lipes Blvd	Corpus Christi		78413	Nueces	10	Urban				NC	55	5	60	Elderly	\$925,000	x	Henry Flores IV	48355005412	64	0	0	4	0	0	0	68					Priority	C	C	
Estimated Amount Available to Allocate		\$1,410,213																																		
													Total HTCs Requested		\$1,850,000																					
Region 11/Rural																																				
19223	Bamboo Estates Apartments	NE FM 1015 and Hwy 281	Progreso		78579	Hidalgo	11	Rural	x			NC	75	4	79	General	\$1,300,000	x	Brad Shields	48215022800	120	5	17	4	8	4	0	158					Priority	C	UR	
19028	Casitas Lantana	3954 Dana Ave	Brownsville	x	78526	Cameron	11	Rural	x			NC	80	0	80	General	\$928,404	x	Mark Moseley	48061014400	117	5	17	4	8	4	0	155						UR		
Estimated Amount Available to Allocate		\$941,584																																		
													Total HTCs Requested		\$2,228,404																					

Application Number	Development Name	Development Address	City	ETJ	ZIP Code	County	Region	Urban/Rural	At-Risk	USDA	Nonprofit	Construction Type	Low-Income Units	Market Rate Units	Total Units	Target Population (Supp. Hsg. = SH)	HTC Request	Direct Loan Section 811	Applicant Contact Name	Census Tract(s)	Self Score Total	\$11.9(c)(8)	\$11.9(d)(1)	\$11.9(d)(4)	\$11.9(d)(5)	\$11.9(d)(6)	\$11.9(d)(7)	Best Possible Score	10 TAC 11.7(l) Part 1	10 TAC 11.7(l) Part 2	10 TAC 11.7(z)	Status	Review Status	Underwriting Status		
Region 11/Urban																																				
19330	Avanti Legacy Emerald Point	~NWC of E. Fern Ave./N. K Cent	McAllen		78501	Hidalgo	11	Urban				NC	84	6	90	Elderly	\$1,500,000	x	Henry Flores III	48215020904	122	5	17	4	8	4	0	160	29.6%	1333	3.08 mi	Priority	C	UR		
19064	4242 Jackson Apartments	4200 Blk N Jackson Rd	McAllen		78504	Hidalgo	11	Urban	x			NC	96	24	120	General	\$1,500,000		Arnold Padilla	48215020904	122	5	17	4	8	4	0	160	29.6%	1333	1.46 mi	Priority	C	C		
19273	Nolana Villas	N K Center St. near E. Nolana A	McAllen		78504	Hidalgo	11	Urban				NC	104	20	124	General	\$1,500,000	x	Steve Lollis	48215020904	122	5	17	4	8	4	0	160	29.6%	1333	1.40 mi	Priority	C	UR		
19331	Avanti at Emerald Point	~NEC of E. Fern Ave./N. Jacksor	McAllen		78501	Hidalgo	11	Urban				NC	65	7	72	General	\$1,500,000	x	Henry Flores III	48215020904	122	5	17	4	8	4	0	160	29.6%	1333	1.24 mi	Priority	C	UR		
19215	West Ridge Apartments	1511 W Ridge Rd.	Pharr		78577	Hidalgo	11	Urban	x			NC	112	0	112	General	\$1,500,000	x	Jennifer Bartlett	48215021404	120	5	17	4	8	4	0	158			Pending Status Appeal		C			
19158	Pendleton Square	NEC Doctors Memorial Dr./Mec	Harlingen		78550	Cameron	11	Urban				NC	54	6	60	General	\$958,000	x	Justin Zimmerman	48061011302	118	5	17	4	8	4	0	156			Pending Status Appeal		C			
Estimated Amount Available to Allocate													\$6,222,635			Total HTCs Requested			\$8,458,000																	
Region 12/Rural																																				
19202	Heritage Heights at Big Spring	120 Airbase Rd	Big Spring		79720	Howard	12	Rural				NC	66	0	66	Elderly	\$900,000	x	Adrian Iglesias	48227950802	116	0	17	4	8	4	0	149				Priority	C	UR		
Estimated Amount Available to Allocate													\$600,000			Total HTCs Requested			\$900,000																	
Region 12/Urban																																				
19228	Chaparral Apartments	4201 N. Garfield St.	Midland		79705	Midland	12	Urban				AcR	124	0	124	General	\$1,198,710		Joseph Weatherly	48329000305	119	0	17	4	8	4	0	152				Priority	C	UR		
19100	Carver Ridge Apartments	1301 E Dormard Ave	Midland		79701	Midland	12	Urban				NC	50	10	60	General	\$897,000		Vaughn C. Zimmerr	48329000100	122	0	17	4	0	4	0	147					UR			
Estimated Amount Available to Allocate													\$922,544			Total HTCs Requested			\$2,095,710																	
Region 13/Rural																																				
19176	Anthony Palms	100 block of Sandia Dr.	Anthony		79821	El Paso	13	Rural				NC	80	0	80	General	\$900,000	x	R.L. "Bobby" Bowlin	48141010203	97	0	17	4	8	4	0	130				Priority	C	UR		
19182	Waterpark Palms	8700 Block of S Desert Blvd.	Anthony		79821	El Paso	13	Rural				NC	80	0	80	General	\$900,000	x	R.L. "Bobby" Bowlin	48141010203	93	0	17	4	8	4	0	126					UR			
Estimated Amount Available to Allocate													\$600,000			Total HTCs Requested			\$900,000																	
Region 13/Urban																																				
19117	Ridgestone Estates	11050 Montana Avenue	El Paso		79936	El Paso	13	Urban				NC	104	0	104	General	\$1,500,000	x	Roy Lopez	48141010311	110	0	17	4	8	4	0	143				Priority	C	UR		
19344	Patriot Place	9500 Kenworthy Dr.	El Paso		79924	El Paso	13	Urban	x			NC	110	0	110	General	\$1,500,000	x	Tom Deloye	48141000101	107	0	17	4	8	4	0	140					C			
19340	Nuestra Senora	405 Montana Ave.	El Paso		79902	El Paso	13	Urban	x			NC	90	0	90	General	\$1,199,367	x	Tom Deloye	48141001600	93	0	17	4	8	4	0	126					UR			
19120	Villas at Augusta	SWC Augusta Dr./N. Zaragoza R	El Paso		79938	El Paso	13	Urban				NC	104	0	104	General	\$1,500,000	x	Roy Lopez	48141010341	106	0	0	4	8	4	0	122	9.5%	884	N/A		UR			
19114	Sunset Vista Seniors	1333 Pullman Dr.	El Paso		79936	El Paso	13	Urban				NC	44	0	44	Elderly	\$643,000	x	Roy Lopez	48141010338	106	0	0	4	8	4	0	122	14.9%	4568	N/A		N	N		
19177	Edgemere Palms	~NWC Edgemere and Zaragoza	El Paso		79938	El Paso	13	Urban				NC	82	14	96	General	\$1,163,300	x	R.L. "Bobby" Bowlin	48141010331	98	0	0	4	0	4	0	106					N	N		
Estimated Amount Available to Allocate													\$2,554,791			Total HTCs Requested			\$7,505,667																	
Estimated Total Amount Available:		\$79,486,881																																		

Application Number	Census Tract(s)	Best Possible Score	Status	10 TAC 11.7(1) P	10 TAC 11.7(1) P	10 TAC 11.7(2)	Address
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Region 1/Rural

19235	48303010408	153		4.2%	3044	N/A	
19156	48117950600	153		10.3%	4892	N/A	
19217	48341950200	153		16.1%	N/A	N/A	

Region 2/Urban

19216	48441012300	155		11.6%	1803	N/A	
19124	48441012000	155		5.4%	4953	N/A	

Region 3/Rural

19338	48139061400	153		7.6%	1950	12.52 mi	1600 West Ennis Avenue, Ennis
19214	48139061400	153		7.6%	1950	11.74 mi	2404 West Ennis Drive, Ennis
							Country Lane Seniors, 133 Park Hills Drive, Waxahachie (#60042)

Region 3/Urban

19276	48439101402	159		37.0%	N/A	2.72 mi	2404 Oakland Blvd, Fort Worth
							Columbia Renaissance Sq Senior, ~2801 Morseby St, Fort Worth (18018)
19277	48439100102	159		21.6%	N/A	.09 mi	3111 (aka 3101) Race St, Fort Worth
							Race Street Lofts, 2902 McLemore St, Fort Worth (#10119)

19315	48439111404	153		11.2%	152	N/A	
19009	48439113922	153		3.0%	672	N/A	
19234	48251130204	153		8.8%	1181	N/A	
19227	48439111011	153		7.1%	1404	N/A	
19143	48439111547	153		6.3%	1706	N/A	
19078	48439113408	153		6.6%	1852	1.56 mi	SWC Hurst and Arthur, Hurst
							Provision at N Valentine, SEC Euless and Valentine, Hurst (#17315)
19073	48439113408	153		6.6%	1852	1.26 mi	W Pipeline Rd W of Buena Vista, Hurst
							Jeremiah Seniors, 909 W Hurst Blvd, Hurst (#08929)
19319	48439111516	153		9.6%	2066	N/A	
19244	48439111544	153		7.7%	3305	NA	
19016	48139060213	153		7.7%	4535	N/A	
19250	48139060300	153		17.1%	N/A	N/A	

19079	48251130408	152	Gen	7.9%	4142	13.36 mi	Hwy 67, W of Patriot Pkwy
19011	48251130408	152	Gen	7.9%	4142	12.72 mi	NWQ Hwy 67 and Hwy 157
							Pecan Tree Apts, 101 Pecan Tree Sq Apts, Grandview (#14277)
19020	48251130304	152	Gen	16.3%	N/A	3.08 mi	
							Cimarron Springs, 1302 E Kilpatrick, Cleburne (#08015)

Region 4/Rural

19052	48213950800	153		10.9%	2696	5.07 mi	N Tool Drive, Tool
19236	48213950800	153		10.9%	2696	4.74 mi	NEQ N Tool Dr and Oak Circle
							Silverleaf at Gun Barrel City, 400 Church St, Gun Barrel City (#11138)

Application Number	Census Tract(s)	Best Possible Score	Status	10 TAC 11.7(1) P	10 TAC 11.7(1) P	10 TAC 11.7(2)	Address
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Region 6/Urban

19085	48201312600	163		9.0%	826	N/A	
19296	48201210100	163		0.0%	5096	N/A	
19070	48201421101	160		N/A	N/A	N/A	(Highest scoring CRP)
19307	48201451402	160		11.8%	157	N/A	
19230	48201432200	160		12.5%	619	N/A	
19242	48157670300	160		15.5%	3607	3.63 mi	~16330 Chimney Rock, Houston
							Miramonte Single Living, 1701 Moore Rd, Fifth Street CDP (#18047)
19245	48157670300	160		15.5%	3607	2.30 mi	~16360 Chimney Rock Dr, Houston
							Jubilee at Texas Pkwy, Texas Pkwy, W of Turtle Creek Dr (#17317)
19257	48157670300	160		15.5%	3607	1.89 mi	SEC Blue Ridge and Sam Houston Pkwy
							Oak Tree Manor Apts, 14603 Fonmeadow, Houston (#04496)
19327	48157670602	160		14.2%	3851	2.98 mi	
							The Miramonte, Moore Rd b/t Court and Fifth Street CDP(#18033)
19109	48157670602	160		14.2%	3851	2.55 mi	
							Miramonte Single Living, 1701 Moore Rd, Fifth Street CDP (#18047)
19047	48201533000	160		43.8%	N/A	N/A	
19286	48201532300	158		14.4%	194	N/A	
19187	48201333901	158		9.2%	3044	N/A	
19146	48201310500	158		31.8%	N/A	N/A	
19299	48201312300	158		38.8%	N/A	N/A	
19001	48201310500	155		31.8%	N/A	1.37 mi	5601 Canal St, Houston
							Cleme Manor, 5300 Coke St, Houston (#15043)
19040	48201310400	155		35.9%	N/A	.92 mi	3801 Garrow St, Houston
							EaDo Lofts, SWC Coyle and Napoleon, Houston (#17188)

Region 7/Urban

19295	48453000307	158		10.5%	N/A	N/A	
19053	48453001845	158		16.3%	N/A	N/A	

Region 8/Urban

19166	48027023108	155		11.4%	198	N/A	
19063	48309002503	155		3.8%	2112	N/A	
19185	48027022105	155		15.1%	3773	N/A	
19148	48309003000	155		16.1%	N/A	N/A	

Region 9/Rural

19304	48091310606	153		11.9%	1588	N/A	
19030	48265960100	153		14.8%	2262	N/A	

Region 9/Urban

19136	48029190603	157		22.4%	N/A	2.54 mi	4415 San Pedro Ave, San Antonio
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Application Number	Census Tract(s)	Best Possible Score	Status	10 TAC 11.7(1) P	10 TAC 11.7(1) P	10 TAC 11.7(2)	Address
							Enclave Gardens Apts, 1602 Jackson Keller Rd, San Antonio (#07452)
19003	48029140400	157		18.7%	N/A	2.45 mi	826 E Highland, San Antonio
							Wheatly Courts, 906 N Mittman, San Antonio (#15069)
19134	48029150501	157		27.5%	N/A	1.09 mi	3727 Nogalitos St, San Antonio
							Guild Park Apts, 779 W Mayfield Blvd, San Antonio (#10058)
19139	48029181403	152		4.9%	106	N/A	N/A
19039	48029121206	152		6.6%	1059	2.56 mi	~4501 Thousand Oaks Dr, San Antonio
19062	48029121206	152		6.6%	1059	2.32 mi	4500 block Thousand Oaks Dr, Oak Valley Apts, 12613 Judson Rd, San Antonio (#16435)

Region 11/Urban

19330	48215020904	160	Elderly	29.6%	1333	3.08 mi	NWC E Fern and N K Center St, McAllen Villas at Beaumont, 2200 Beaumont Ave, McAllen (#09923)
19064	48215020904	160	General	29.6%	1333	1.46 mi	4200 blk N Jackson Rd, McAllen
19273	48215020904	160	General	29.6%	1333	1.40 mi	N K Center St, McAllen
19331	48215020904	160	General	29.6%	1333	1.24 mi	~NEC E Fern Ave and N Jackson Rd, Memorial Apts II, 501 E jasmine, McAllen (#18235)

Region 13/Urban

19120	48141010341	122		9.5%	884		N/A
19114	48141010338	122		14.9%	4568		N/A

APPENDIX

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**