

**BOARD BOOK
OF
January 14, 2021**



Leo Vasquez III, Chair
Leslie Bingham, Vice-Chair
Paul Braden, Member
Sharon Thomason, Member
Ajay Thomas, Member
Brandon Batch, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT

Fiscal Year 2019 (September 1, 2018, through August 31, 2019)

Owner Financing and Down Payment	
<ul style="list-style-type: none"> 30-year, fixed interest rate mortgage loans Mortgage credit certificates Down payment, closing cost assistance Homebuyer education 	
Programs:	
<ul style="list-style-type: none"> Homebuyer Assistance Program (HBA)* Single Family Homeownership 	
Expended Funds:	\$1,693,834,604
Total Households Served:	9,605

Energy Related Assistance	
<ul style="list-style-type: none"> Utility bill payment assistance Energy consumption education Weatherization for energy efficiency 	
Programs:	
<ul style="list-style-type: none"> Comprehensive Energy Assistance Program (CEAP) Weatherization Assistance Program (WAP) 	
Expended Funds:	\$147,270,662
Total Households Served:	162,668

Multifamily New Construction	
<ul style="list-style-type: none"> Affordable rental units financed and developed 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds Multifamily Direct Loan Program* 	
Expended Funds:	\$108,945,178
Total Households Served:	7,062

Homelessness Services	
<ul style="list-style-type: none"> Shelter building rehabilitation, conversion, operations Essential services e.g., health services, transportation, job training, employment services 	
Programs:	
<ul style="list-style-type: none"> Emergency Solutions Grant Program (ESG) Homeless Housing and Services Program (HHSP) 	
Expended Funds:	\$12,162,959
Total Individuals Served:	71,350

Multifamily Rehab Construction	
<ul style="list-style-type: none"> Affordable rental units financed and rehabilitated 	
Programs:	
<ul style="list-style-type: none"> 9% Housing Tax Credits (HTC) 4% Housing Tax Credits (HTC) Multifamily Bonds 	
Expended Funds:	\$56,792,063
Total Households Served:	2,503

Supportive Services	
Provides administrative support for essential services for low income individuals through Community Action Agencies	
Program:	
<ul style="list-style-type: none"> Community Services Block Grant Program (CSBG) 	
Expended Funds:	\$31,103,729
Total Individuals Served:	561,906

Owner Rehabilitation Assistance	
<ul style="list-style-type: none"> Home rehabilitation, reconstruction Manufactured housing unit replacement Accessibility modifications e.g., ramp, grab bar installation 	
Programs:	
<ul style="list-style-type: none"> Homeowner Rehabilitation Assistance Program (HRA)* Amy Young Barrier Removal Program 	
Expended Funds:	\$11,384,025
Total Households Served:	251

Rental Assistance	
<ul style="list-style-type: none"> Short, long term rent payment help Assistance linked with services Transitional assistance Security, utility deposits 	
Programs:	
<ul style="list-style-type: none"> Tenant-Based Rental Assistance (TBRA)* Section 8 Housing Choice Vouchers Section 811 	
Expended Funds:	\$11,021,909
Total Households Served:	1,932

Single Family Development	
<ul style="list-style-type: none"> Single family development, reconstruction, rehabilitation Do-it-yourself, "sweat equity" construction, rehabilitation Contract for Deed refinance 	
Programs:	
<ul style="list-style-type: none"> Single Family Development Program (SFD)* Contract for Deed (CFD) 	
Expended Funds:	\$3,769,888
Total Households Served:	85

Total Expended Funds:	\$2,076,285,016
Total Households Served:	817,362
All FY2019 data as reported in TDHCA's 2020 State Low Income Housing Plan and Annual Report (SLIHP).	
Note: Some households may have been served by more than one TDHCA program.	

* Administered through the federally funded HOME Investment Partnerships Program

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

**A G E N D A
9:00 AM
January 14, 2021**

Meeting Location: In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

Governing Board Webinar registration:

<https://attendee.gotowebinar.com/register/1386452688513425166>

Dial-in number: +1 (415) 930-5321, access code 934-629-276 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

If the GoToWebinar terminates prior to adjournment of the meeting (i.e. if the webinar session "crashes") the meeting will be recessed. A new link to the meeting will be posted immediately on the TDHCA Board meetings web page (<https://www.tdhca.state.tx.us/board/meetings.htm>) along with the time the meeting will resume. The time indicated to resume the meeting will be within six hours of the interruption of the webinar. Please note that in this contingency, the original meeting link will no longer function, and only the new link (posted on the TDHCA Board meetings web page) will work to return to the meeting.

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

Leo Vasquez, 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.

* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

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:

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summary for November 5, 2020

Beau Eccles
General Counsel

ASSET MANAGEMENT

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

Rosalio Banuelos
Director of Asset
Management

03006 Villas of Park Grove Katy

- c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement

15247 City Square Apartment Homes Garland

MULTIFAMILY FINANCE

- d) Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed for:

Marni Holloway
Director of
Multifamily Finance

20011	Canal Lofts	Houston
20015	New Caney Oaks	New Caney
20075	New Hope Housing Savoy	Houston
20077	Lockwood South Apartments	Houston
20082	Connect South Apartments	Houston
20097	Regency Lofts	Houston
20100	Southlawn at Milby	Houston
20140	Richmond Senior Village	Houston
20179	Avanti West	Edinburg
20204	Heritage Senior Residences	Houston
20223	Campanile on Briar Hollow	Houston
20248	Cedar Cove Apartments	Sealy
20251	Mathis Apartments	Mathis
20281	Bayou Bend Apartments	Waller
20329	Fish Pond at Huntsville	Huntsville

COMMUNITY AFFAIRS

- e) Presentation, Discussion and Possible Action on an Extension to the Release of Coronavirus Aid, Relief, and Economic Security Act Low Income Home Energy Assistance Program Funds Held in Emergency Reserve and Authorization to Award Such Funds

Michael De Young
Director of
Community Affairs

LEGAL

- f) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Emerald Run (HTC 70079 / CMTS 2320)

Jeff Pender
Deputy General Counsel

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Outreach and Activities Report (December 2020-January 2021)
- b) Report on Activities Related to the Department's Response to COVID-19 Pandemic
- c) Report on the Department's Swap Portfolio and recent activities with respect thereto

Michael Lyttle
Director of
External Affairs

Brooke Boston
Deputy Director
of Programs

Monica Galuski
Director
of Bond Finance

ACTION ITEMS

ITEM 3: RULES

Presentation, discussion, and possible action on an order proposing the amendment of 10 TAC §8.7 Program Regulations and Requirements, and directing publication for public comment in the Texas Register.

Spencer Duran
Director of
Section 811

ITEM 4: ASSET MANAGEMENT

Presentation, discussion, and possible action on timely filed appeal under the Department's Multifamily Program Rules for Villas on Raiford (Exchange #15090009913)

Rosalio Banuelos
Director of Asset
Management

ITEM 5: SINGLE FAMILY & HOMELESS PROGRAMS

- a) Presentation, discussion, and possible action on the Dispute of EARAC's Emergency Solutions Grants Coronavirus Aid, Relief, and Economic Security Act first allocation award recommendation for Galveston County Community Action Council, Inc. and approval of an award to The Salvation Army, Inc. serving Galveston County
- b) Presentation, discussion, and possible action on Emergency Solutions Grants Coronavirus Aid, Relief, and Economic Security Act second allocation awards

Abigail Versyp
Director of Single Family &
Homeless Programs

ITEM 6: HOUSING RESOURCE CENTER

Presentation, discussion and possible action on adoption of the second substantial amendment to the 2019 State of Texas Consolidated Plan: One-Year Action Plan relating to Community Development Block Grant funding under the CARES Act; authority to request waivers of HUD; and delegation of authority to the Department's Executive Director to make awards to subrecipients

Elizabeth Yevich
Director of Housing
Resource Center

ITEM 7: BOND FINANCE

- a) Presentation, discussion, and possible action on Inducement Resolution No. 21-008 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Meadowbrook (#21604)
- b) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (The Montage) Resolution No. 21-009 and a Determination Notice of Housing Tax Credits
- c) Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Oso Bay Apartments) Resolution No. 21-010 and a Determination Notice of Housing Tax Credits

Teresa Morales
Director of
Multifamily Bonds

ITEM 8: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.101(a)(1) of the Qualified Allocation Plan (QAP) and the issuance of a Determination Notice for 4% Housing Tax Credits for 2100 Memorial in Houston (#20490)
- b) Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.101(b)(8)(B)(iii) of the Qualified Allocation Plan (QAP) and the issuance of a

Teresa Morales
Director of
Multifamily Bonds

Determination Notice for 4% Housing Tax Credits for The Oleanders at Broadway (#20497)

- c) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

20493	The Ridge at Lancaster	Dallas
20703	Cove in Odessa	Odessa

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):

Leo Vasquez
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 Nancy Dennis, 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.

1a

BOARD ACTION REQUEST

BOARD SECRETARY

JANUARY 14, 2021

Presentation, discussion, and possible action on Board meeting minutes summary for November 5, 2020

RECOMMENDED ACTION

Approve the Board meeting minutes summary for November 5, 2020

RESOLVED, that the Board meeting minutes summary for November 5, 2020, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
November 5, 2020**

On Thursday, the fifth of November 2020, at 9:04 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held online via telephone and web link.

The following members, constituting a quorum, were present and voting:

- Leslie Bingham, Vice Chair
- Paul A. Braden
- Sharon Thomason
- Leo Vasquez

Leslie Bingham served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as presented after hearing public comment (listed below).

- Sunny Phillip thanked the Board for its consideration of Item 1(d) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#20462, Sunland Country Apartments, Harlingen)
- Elizabeth Roehm, Texas Housers, testified in opposition to staff recommendation on Item 1(f) – Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.101(b)(1)(C) of the Qualified Allocation Plan for Cavile Place in Fort Worth, Tarrant County

2) Action Item 3 – Presentation, discussion, and possible action on repeal of and proposed new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D Debarment to be published in the *Texas Register* for public comment – was presented by Patricia Murphy, TDHCA Director of Compliance, with additional information from Bobby Wilkinson, TDHCA Executive Director. The Board unanimously approved staff recommendation to publish the rules for comment.

3) Action Item 4 – Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov’t Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the

Governor, directing its publication in the *Texas Register* – was presented by Marni Holloway, TDHCA Director of Multifamily Finance, with additional information from Mr. Wilkinson and Mr. Eccles. Following public comment (listed below), the Board unanimously approved staff recommendation as amended during the meeting to approve the order which recommended that the Governor repeal the existing rules and publish the final rules in the *Texas Register*.

- Donna Rickenbacker, Marque Development, provided a comment on the draft rules and asked a question of staff
- Robbye Meyer, Arx Advantage, testified in opposition to staff recommendation
- Elizabeth Roehm, Texas Housers, testified in opposition to staff recommendation
- Antoinette Jackson, Banks Law Firm, testified in opposition to staff recommendation
- Walter Moreau, Foundation Communities, testified in support of staff recommendation
- Barbie Brashear, Harris County Domestic Violence Coordinating Council, provided comments on the draft rules
- Joy Horak-Brown, New Hope Housing, provided comments on the draft rules
- Veronica Soto, City of San Antonio Neighborhood Housing Services, testified in opposition to staff recommendation
- Eric Samuels, Texas Homeless Network, testified in opposition to staff recommendation
- Thao Costis, SEARCH Homeless Services, testified in opposition to staff recommendation
- Mike Nichols, Coalition for the Homeless, testified in opposition to staff recommendation
- Mark Thiele, Houston Housing Authority, testified in opposition to staff recommendation

4) During the Public Comment portion of the meeting the follow persons provided comment:

- Robbye Meyer, Arx Advantage, made comments about the readiness-to-proceed requirements in the rules and some challenges 2020 housing tax credit awardees who also have USDA funding are experiencing in this area

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 11:06 a.m. The next meeting was set for Thursday, December 10, 2020.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
JANUARY 14, 2021

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Villas of Park Grove (HTC #03006)

RECOMMENDED ACTION

WHEREAS, Villas of Park Grove (the Development) received a 9% Housing Tax Credit (HTC) award in 2003 to construct 150 multifamily units for elderly households in Katy, Harris 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 this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

WHEREAS, in 2015, the 84th Texas Legislature, Regular Session, 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, Villas of Park Grove, Ltd. (the Development Owner or Owner) requests to amend the LURA for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development 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 LURA amendment for Villas of Park Grove is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Villas of Park Grove received a 9% HTC award in 2003 for the construction of 150 multifamily units for elderly households in Katy, Harris County. In a letter dated December 7, 2020, Caskie Collet, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2003, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits recorded in Harris County on October 25, 2004.

The additional use restrictions in the current HTC LURA require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization or to the Department, if at any time after the 15th year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 17th year of the Compliance Period. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the Texas Legislature, Regular Session, 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 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 Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a telephonic public hearing on the matter on December 10, 2020. No public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

VILLAS OF PARK GROVE, LTD.
601 California Street, Suite 1150
San Francisco, CA 94108

December 7, 2020

VIA HAND DELIVERY

Ms. Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA File No. 03006; Villas of Park Grove (the "**Property**")

Dear Ms. Trevino:

The undersigned is the General Partner (herein so called) of Villas of Park Grove, Ltd., a Texas limited partnership (the "**Partnership**") and the current owner of the Property. This letter constitutes request for a material LURA amendment in order to modify the 2-year Right of First Refusal ("**ROFR**") period.

Request to Amend ROFR Period

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day ROFR period. Currently, the LURA for this Property requires a 2-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 the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the 2-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. Based on discussion with Rosalio Banuelos, we believe it may be possible for that to occur in January 2021.

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

Sincerely,

VILLAS OF PARK GROVE, LTD.,
a Texas limited partnership

By: Talus Partners I, LLC,
a Delaware limited liability company,
its General Partner

By: Gung Ho Partners, LLC,
a Delaware limited liability company,
its Manager

By: 

Caskie Collet
Chief Operating Officer of Manager

1c

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
JANUARY 14, 2021

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement for City Square Apartment Homes (HTC #15247)

RECOMMENDED ACTION

WHEREAS, City Square Apartment Homes (the Development) received a 9% Housing Tax Credit (HTC) award in 2015 to construct 126 multifamily units, of which 88 are HTC units, in Garland, Dallas County;

WHEREAS, the HTC Application for the Development received one point for agreeing to include a certified Historically Underutilized Business (HUB) in the ownership structure of the General Partner and materially participating in the development and operation of the Development throughout the Compliance Period, and this requirement is included in the Land Use Restriction Agreement (LURA) for the Development;

WHEREAS, IRS Forms 8609 have not been issued for the Development, but TX Garland Apartments, LP (Development Owner or Owner) and Rise Residential Construction, LP (the HUB member) requests to remove the HUB participation requirement from the LURA for ad valorem tax exemption purposes;

WHEREAS, Board approval is required because, under 10 TAC §10.405(b)(1)(A), the removal of a HUB participation requirement will only be processed as a non-material LURA amendment after issuance of 8609s;

WHEREAS, the HUB will remain in the ownership structure as the sole owner of the Class B Special Limited Partner and retain certain control rights under the partnership agreement;

WHEREAS, the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b); and

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

NOW, therefore, it is hereby

RESOLVED, that the requested material amendment to the Application and LURA for City Square Apartment Homes is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

City Square Apartment Homes received a 9% HTC award in 2015 for the new construction 126 multifamily units, of which 88 are HTC units, in Garland, Dallas County. The Development is a combination of new construction and an adaptive re-use of a former bank building located in downtown Garland and was part of a larger plan by Downtown Garland Redevelopment. The Application for the Development received one point because the Development was structured to include a Historically Underutilized Business (HUB) in the ownership structure that would have some combination of ownership interest in the General Partner of the Applicant, cash flow from operations, and Developer Fee, which taken together equal at least 80% and no less than 5% for any category. The HUB is also required to materially participate in the Development and operation of the property throughout the Compliance Period. This was codified in the Development's LURA, which was recorded on December 27, 2018, and identifies Rise Residential Construction, LP as the HUB. Construction of the Development has been completed. The cost certification is currently under review, and therefore, IRS Forms 8609s have not been issued.

On November 18, 2020, Michelle Snedden, the Development Owner's representative, submitted a request to remove the HUB participation requirement in the LURA. The request is needed to address an issue with the Dallas Central Appraisal District (DCAD) that is preventing the Development from qualifying for a property tax exemption due to the current ownership structure. In a previous ownership transfer approved by the Department on January 24, 2020, the original General Partner, TX Garland Apartments GP, LLC, solely owned by the HUB member, was replaced by City Square GHFC GP, LLC (General Partner). As part of the change, the HUB member became a co-owner of the General Partner (5% interest) and was added to the ownership structure as a Class B Special Limited Partner (0.0025% interest). Garland Housing Finance Corporation (GHFC) was also added as a co-owner of the General Partner (95% interest) as part of a restructuring of the deal to meet the lender's requirement for the conversion to permanent financing that occurred May 7, 2020. The lender's requirements included transferring the land to GHFC and entering into a Ground Lease Agreement with them, admitting GHFC into the Development Owner structure as a General Partner, and qualifying for an ad valorem tax exemption. However, according to the Owner, the lender agreed to close the permanent loan and allow the Owner additional time to either obtain the tax exemption from DCAD, based on the ownership structure approved by the Department on January 24, 2020, or to obtain approval from the Department to amend the LURA to remove the HUB provision in order to amend the ownership structure as required to receive the exemption. The Owner began the process of seeking the property tax exemption from DCAD and on October 5, 2019, submitted a request for a predetermination that the property would qualify based on GHFC as the 100% owner of the General Partner interest. The Owner received a predetermination letter from DCAD on October 14, 2019, confirming that the property should qualify for the exemption. On October 17, 2019, the Owner notified DCAD that there was an error in the

previous ownership structure identified for the General Partner and that GHFC would be the 95% owner of the General Partner with the HUB maintaining a 5% ownership interest in the General Partner in order to comply with the Department's HUB requirements. On November 14, 2019, the Owner was advised by DCAD that the property would not qualify for the exemption because the General Partner must be wholly owned by GHFC. The Owner's legal counsel states that they have provided DCAD evidence that they have closed other transactions that received an exemption when a governmental entity demonstrated control with a 51% or greater ownership interest in the General Partner entity. However, to date, the Owner's legal counsel has been unsuccessful in obtaining the exemption from DCAD for the Development based on the current ownership structure. Therefore, the Owner requests approval to remove the HUB provision from LURA in order to allow GHFC to become the sole owner of the General Partner so that the Development will meet DCAD's requirement for the property tax exemption. The HUB will continue to be the sole member of the Class B Special Limited Partner and materially participate in the Development.

A review of the cost certification submitted by the Owner on April 27, 2020, supports that the Development needs the property tax exemption as a result of significant changes to the original sources and uses identified at Application. The cost certification reveals that the total development costs increased approximately \$10.3M from the original estimates provided at Application. There were significant increases to the Building Costs (\$6.26M) and Contractor fees (\$2.1M), and the financing costs (\$2.27M). The Owner explains that the City of Garland required additional construction and upgrades such as a traffic signal, street lighting, upsizing of water and sewer line, life and safety upgrades to the bank tower, and a 100% brick exterior. These changes and additions, combined with increases in labor and materials, contributed to the significant increase in the construction costs. It should also be noted that the Development was approved for a reallocation of credits under force majeure at the Board meeting held December 14, 2017, and a new Carryover Allocation Agreement was issued with a placement-in-service (PIS) deadline of December 31, 2019. The Development met the PIS deadline as evidenced by a Certificate of Occupancy dated December 31, 2019. The Owner explains that the additional time needed to complete the project resulted in increased financing costs. To address the \$10.3M increase in the development costs, the Owner increased the permanent loan by \$6,815,000, from \$6.3M identified at Application to \$13,115,000. Additionally, the HUB and the Developer, RRC Development Garland, LLC, contributed cash flow loans in the amount of \$1,916,151 and \$1,483,714, respectively. The Developer also deferred a large portion of their fee. Therefore, as a result of the additional debt required to address the cost increases, the Development needs the property tax exemption for feasibility purposes. As noted above, the HUB provision must be removed in order to allow GHFC to be the sole owner of the General Partner in order to meet DCAD's requirement to qualify for the exemption.

Pursuant to 10 TAC §10.405(b)(1)(A), removal of a HUB participation requirement will only be processed as a non-material LURA amendment after issuance of 8609s. Therefore, Board approval is required for the amendment to remove the HUB provision from the LURA.

The requested change does not materially alter the Development in a negative manner, and was not reasonably foreseeable or preventable by the Development Owner at the time of Application. The Development Owner has complied with the amendment and notification requirements under 10 TAC

§10.405(b). The Development Owner held a public hearing telephonically on the matter on November 18, 2020. No negative comments were received.

Staff has confirmed that the loss of the point for the removal of the HUB participation requirement at the time of Application would not have affected its eligibility for the tax credit award. Therefore, staff recommends approval of the material amendment of the LURA as presented herein.



A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS & COUNSELORS

Michelle J. Snedden
9201 N. Central Expressway
Fourth Floor
Dallas, Texas 75231
(214) 780-1413 (Direct)
(214) 780-1401 (Fax
msnedden@shackelford.law

November 18, 2020

Email to asset.management@tdhca.state.tx.us
and Federal Express

Texas Department of Housing and Community Affairs
Asset Management Division
Attn.: Lee Ann Chance
221 East 11th Street
Austin, Texas 78701-2410

Re: TDHCA Project No. 15247
City Square Apartment Homes (the "Project")
Our File No. 51385.9
HUB Removal LURA Amendment

Dear Mrs. Chance:

Our firm represents TX Garland Apartments, LP, a Texas limited partnership ("Partnership") and Rise Residential Construction, LP, a Texas limited partnership ("Rise"). On behalf of Partnership and Rise, this letter requests a material LURA Amendment for the Project in order to remove the requirement for a Historically Underutilized Business ("HUB") in the ownership structure of Partnership. Partnership and Rise request the removal of the HUB requirement in order to address the Dallas Central Appraisal District's ("DCAD") determination that the Project will not qualify for an ad valorem tax exemption based on the current ownership structure.

The Project qualified to receive one (1) point for including the HUB in the ownership structure of Partnership (i.e., Rise's 5% ownership of General Partner). The Project filed its application in 2015. Pursuant to the 2015 Qualified Allocation Plan ("QAP"), the HUB must have some combination of ownership interest, cash flow from operations and development fee which taken together equal at least 80% and no less than 5% for any category. To qualify for the HUB point and meet the 80%/5% requirements, the Project was organized and structured such that Rise would receive at least 50% of both cash flow from operations and developer fee, and own at least 5% of the ownership interest in General Partner.

City Square GHFC GP, LLC, a Texas limited liability company ("General Partner"), is the general partner of Partnership. Partnership converted to a permanent loan (the "Permanent Loan") on May 7, 2020 ("Conversion"). At Conversion, and in order to qualify for an ad valorem tax exemption as required by the documents governing the Permanent Loan (the "Permanent Loan Documents"), Partnership: (i) transferred the land on which the Project is located (the "Land") to Garland Housing Finance Corporation, a Texas housing finance corporation ("GHFC"), (ii)

entered into a ground lease with GHFC, and (iii) admitted General Partner to Partnership to serve as the new general partner. In addition, TX Garland Apartments GP, LLC, a Texas limited liability company (“Class B Special Limited Partner”), converted its previous general partner interest to a Class B special limited partner interest. Class B Special Limited Partner is a wholly-owned subsidiary of the HUB, Rise. TDHCA approved the above transfer and ownership changes as evidenced in the approval letter dated January 24, 2020 attached hereto as Exhibit A.

On October 5, 2019, our firm sent a letter to DCAD requesting a predetermination that the Project will qualify for an ad valorem tax exemption if, among other things, GHFC owned **100%** of the ownership interest in General Partner. On October 14, 2019, our firm received a predetermination letter from DCAD (“Letter #1”), attached hereto as Exhibit B, indicating that the Project “should be exempt from taxation by virtue of Section 11.11 of the Tax Code and Chapter 394.” This was based upon GHFC owning 100% of General Partner.

On October 17, 2019, our firm sent a response letter to Letter #1 advising DCAD that General Partner would actually be owned 95% by GHFC and 5% by Rise (to continue to meet TDHCA’s HUB ownership requirements). On November 14, 2019, we received a second predetermination letter from DCAD (“Letter #2”), which is attached hereto as Exhibit C, indicating that the Project “will **not** be exempt from taxation” because General Partner would not be wholly owned by GHFC. The only condition that changed between Letter #1 and Letter #2 was that Rise would own 5% of General Partner.

Pursuant to the Permanent Loan Documents and as required by Bellwether Enterprise Real Estate Capital, LLC (“Permanent Lender”), Partnership must qualify for an ad valorem tax exemption and obtain either (a) confirmation from DCAD that the Project will qualify with Rise, as the HUB, owning 5% of General Partner, or (b) TDHCA approval for Rise to assign its 5% ownership interest in General Partner and allow the HUB ownership requirement to be satisfied via Rise’s ownership of Class B Special Limited Partner.

We **disagree** with DCAD’s position in Letter #2. We have provided DCAD with numerous examples of other transactions our firm has closed in which the general partner is not wholly-owned by a governmental entity yet has received the ad valorem tax exemption. In addition, we have provided a legal and statutory explanation to DCAD of why the governmental entity need only own a minimum of 51% of the general partner entity to show the required “control”.

Rise has and will continue to materially participate in the development and operation of the Project. Rise and Rise’s principal (Melissa Fisher) are Borrower Principals under the Permanent Loan documents and the guarantors of the Permanent Loan and investor documents.

Partnership is governed by that certain Amended and Restated Limited Partnership of Partnership dated September 20, 2016, as amended by the First Amendment to Amended and Restated Limited Partnership Agreement of Partnership dated May 7, 2020 (collectively, the “Partnership Agreement”). As noted above, Class B Special Limited Partner, a wholly-owned subsidiary of Rise and the prior general partner of Partnership, became the Class B special limited partner at Conversion. The Partnership Agreement currently provides Class B Special Limited Partner certain control rights as it relates to Partnership and the authority to perform certain actions including, but not limited to, (i) the right to cure any monetary or non-monetary default of General

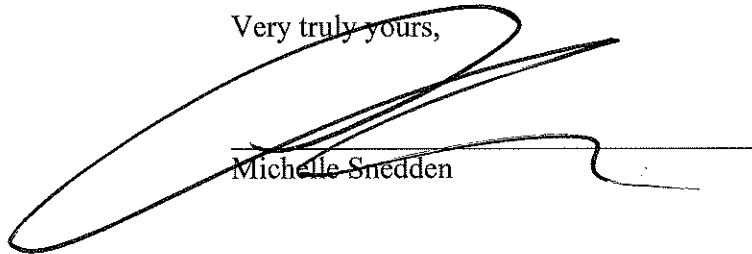
Partner or Partnership under the Partnership Agreement and/or Project Documents, (ii) the right to restrict certain actions by General Partner without its prior written consent, (iii) process necessary documentation with TDHCA, (iv) analyze the economy and forecasting future growth potential of the geographic area in which the Project is located, (v) contact local government officials concerning access to utilities, public transportation, impact fees and local ordinances, (vi) perform environmental tests on the Land, and (vii) serve as "Partnership Representative" of Partnership. Rise, as the sole member of Class B Special Limited Partner, has just as much (if not more) control and material participation rights in the Partnership as it does as a 5% member of General Partner,

Without the ad valorem tax exemption, the Project is not financially feasible. Due to DCAD's valuation methods, the property tax bill without the ad valorem tax exemption jeopardizes the long-term feasibility of the Project. The Project is valued much higher by the appraisal district than the TDHCA underwritten property taxes, with assessed taxes of over \$1,500 per unit, making the Project infeasible without the ad valorem tax exemption. Moreover, due to changes in the downtown design code post-closing, the Project already exceeded its budget, as reflected in the cost certification submitted earlier this year. In order to ensure lasting investment stability and the balanced sources and uses necessary to comply with the tax credit investment obligations of the Project, the ad valorem tax exemption is critical to the Project. Furthermore, the removal of the HUB requirement is a prerequisite for the Permanent Lender to provide its financing. Without a change in DCAD's position (which as we note above, we disagree with), removal of the HUB requirement is the only option for the Projects feasibility.

Partnership will deliver a check under separate cover in the amount of \$3,000.00. Partnership has notified all residents, investor, lender and appropriate elected officials as to the proposed amendment and will hold a public hearing on Wednesday, November 18th. Please see attached at Exhibit D. On behalf of Partnership, we kindly request that TDHCA amend the LURA to remove the HUB requirement. This amendment is essential to the financial feasibility of the Project.

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

Very truly yours,



Michelle Snedden

cc Melissa Fisher (via email)
Bill Fisher (via email)
John Shackelford (of the firm)

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Exhibit A

TDHCA Approval Letter

[Attached]



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*

January 24, 2020

Writer's direct dial: (512) 475-3296
Email: bobby.wilkinson@tdhca.state.tx.us

Michelle Snedden
Shackelford, Bowen, McKinley & Norton, LLP
9201 N. Central Expressway
Fourth Floor
Dallas, TX 75231
Via Email: msnedden@shackelfordlaw.net

RE: CITY SQUARE APARTMENT HOMES (THE DEVELOPMENT)
TDHCA HTC # 15247, 17746
APPROVAL OF OWNERSHIP TRANSFER & NON-MATERIAL APPLICATION AMENDMENT

Dear Ms. Snedden:

The Texas Department of Housing and Community Affairs (the Department) received your letter dated July 20, 2018, requesting the Department's approval of a transfer of interest from the General Partner, TX Garland Apartments GP, LLC (0.005%), owned by its 100% Sole Member, Rise Residential Construction, LP, to the newly formed General Partner of City Square GHFC GP, LLC (0.0025%), which admitted the new majority member, Garland Housing Finance Corporation (95%), and retained Rise Residential Construction, LP (5% member and HUB). The transfer request also includes an additional request for approval of a new Class B Special Limited Partner, TX Garland Apartments GP, LLC (0.0025%) which is owned by its 100% sole member, Rise Residential Construction, LP (the HUB and 5% GP member). In addition to the ownership transfer request, the Development also submitted a request in tandem for a non-material application amendment to allow Garland Housing Finance Corporation to enter the Developer structure as a new co-Developer for the Development.

According to the documentation submitted, Garland Housing Finance Corporation is being brought into the ownership and developer structures to allow the property to take advantage of the 100% ad valorem tax exemption and to better provide housing services for residents of Garland and the surrounding area.



Your request for approval of both the non-material application amendment and ownership transfer is granted. The new ownership and its members take the property subject to all the terms and restrictions currently in place. The owner, or authorized representatives thereof, have affirmed through a signed and notarized Owner Certification, dated November 6, 2019, that they have read and understand Title 10, Texas Administrative Code, Chapters 10 and 11. The new Owners have also affirmed that they have read and understand the Department's Rules (Title 10, Texas Administrative Code, Chapter 10). The new Owners have also affirmed that they have read the Declaration of Land Use Restrictive Covenants/Agreements (LURA) that applies and will continue to apply to the Development and are aware of all representations of the Application that the LURA contains and to which the ownership and operation of the Development is, and will be, subject to until such time as the LURA is terminated. This letter and the aforementioned certification may be recorded in the property records of the county in which the property resides but the Department's failure to do so does not have any effect whatsoever in the enforceability of the LURA or said certification.

If you have any questions about this property, please contact the Asset Manager assigned to this Development, Laura DeBellas, at (512) 475-0577 or via email at laura.debellas@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby Wilkinson", with a stylized flourish at the end.

Bobby Wilkinson
Executive Director

LD

Exhibit B

Letter #1

[Attached]

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

Peter G. Smith, Partner
(214) 665-3365
E-mail: psmith@njdhs.com

Attorneys & Counselors at Law
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010
E-mail NJDHS@NJDHS.com

ROBERT L. DILLARD, JR. (1913-2000)
H. LOUIS NICHOLS (1916-2010)

ROBERT L. DILLARD, III
OF COUNSEL
LAWRENCE W. JACKSON
OF COUNSEL

October 14, 2019

*Via Email: losterman@shackelford.law
and Via First Class Mail*

Lauren G. Osterman
Shackelford, Bowen, McKinley & Norton, LLP
9201 N. Central Expressway
Fourth Floor
Dallas, Texas 75231

Re: Request for predetermination of property tax treatment for re-structured City Square Lofts multifamily housing project to be owned by Garland Housing Finance Corporation ("Project")

Dear Ms. Osterman:

Please be advised that we are the general counsel for the Dallas Central Appraisal District ("DCAD") and have been requested to respond to your letter dated October 4, 2019 requesting a predetermination letter regarding the above Project.

This letter is a non-binding advisory determination and is subject to the actual facts should the transaction occur. This letter is not binding on DCAD and does not affect the DCAD Chief Appraiser's determination to grant or deny an exemption for the subject property.

You represent the TX Garland Apartments, LP, a Texas limited partnership ("Partnership"), and advise that the Partnership owns the Project consisting of (a) land at 705 W. Avenue B, Garland, Texas 75248 (the "Land"), and (b) improvements located on the Land consisting of an affordable, multifamily apartment complex known as "City Square Lofts" (the "Improvements").

On behalf of the Partnership you request a predetermination of ad valorem exemption on a proposed re-structuring of the Project to bring Project ownership to the Garland Housing Finance Corporation ("GHFC"). The GHFC is a public, nonprofit housing finance corporation organized pursuant to the Texas Housing Finance Corporations Act Chapter 394, Texas Local Gov't Code (the "Act").

You advise that the proposed re-structuring of the Project consists of the following:

1. The Partnership would transfer fee title to the Land to GHFC. The Partnership would retain the Improvements.
2. GHFC would ground lease the Land back to Partnership pursuant to 99-year term ground lease. The ground lease will require the Partnership to lease 70% of the units within the Improvements to residents having an income that doesn't exceed 60% or less of the area median income ("AMI"), qualifying such units as "affordable" under regulations promulgated by the U.S. Department of Housing and Urban Development. The remaining 30% of the total units, would be "market rate" units.
3. The Partnership would make GHFC its sole general partner through a Texas limited liability company called City Square GHFC GP, LLC, a wholly-owned subsidiary of GHFC. City Square GHFC GP, LLC, would be the sole general partner of Partnership.
4. The Partnership would grant to GHFC both (i) a purchase option, exercisable at any time desired by GHFC, to purchase the Improvements from Partnership and (ii) a right of first refusal, exercisable in the event Partnership has entered into an agreement to sell the Improvements.


Generally, property owned by a housing finance corporation used for public purposes is exempt from taxation. You assert that after the proposed re-structuring: (i) the Land will be exempt from ad valorem taxation under Section 394.405 of the Act and Section 11.11 of the Tax Code, as it will be owned in fee title by GHFC; (ii) the post-restructuring ownership and use of the Improvements by Partnership and GHFC satisfies the requirements for exemption from ad valorem taxation under Section 11.11 of the Tax Code and Chapter 394 of the Act because the GHFC will have equitable title to the subject property through the right to compel legal title to the Improvements at any time pursuant to the purchase option and right of first refusal agreements; (iii) GHFC's control of the Partnership's general partner ensures the Partnership's compliance with the terms of the purchase option and right of first refusal; and (iv) because (A) GHFC would own legal title to the Land; (B) GHFC would wholly own the Partnership's sole general partner; (C) GHFC would have an option to purchase the Improvements at any time; and (D) GHFC would have a right of first refusal to acquire the Improvements in the event of a sale, GHFC would own both legal and equitable title to the Project and, would be exempt from ad valorem taxation.

Based on the foregoing representation, the Project should be exempt from taxation by virtue of Section 11.11 of the Tax Code and Chapter 394 of the Act. This letter is a non-binding advisory determination and is subject to the actual facts should the transaction occur. This letter is not binding on DCAD and does not affect the DCAD Chief Appraiser's determination to grant or deny an exemption for the subject property.

Thank you for your attention to this matter, and should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

**NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.**

By: 
Peter G. Smith

PGS:tlo

cc: W. Kenneth Nolan (*Via Email*)
Elizabeth Sarles (*Via Email*)
Brad Neighbor, Garland City Attorney (*Via Email*)

Exhibit C

Letter #2

[Attached]

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.

Peter G. Smith, Partner
(214) 665-3365
E-mail: psmith@njdhs.com

Attorneys & Counselors at Law
1800 Ross Tower
500 North Akard Street
Dallas, Texas 75201
(214) 965-9900
Fax (214) 965-0010
E-mail NJDHS@NJDHS.com

ROBERT L. DILLARD, JR. (1913-2000)
H. LOUIS NICHOLS (1916-2010)

ROBERT L. DILLARD, III
OF COUNSEL
LAWRENCE W. JACKSON
OF COUNSEL

November 14, 2019

*Via Email: losterman@shackelford.law
and Via First Class Mail*

Lauren G. Osterman
Shackelford, Bowen, McKinley & Norton, LLP
9201 N. Central Expressway
Fourth Floor
Dallas, Texas 75231

Re: Revised request for predetermination of property tax treatment for re-structured City Square Lofts multifamily housing project to be owned by Garland Housing Finance Corporation ("Project")

Dear Ms. Osterman:

Previously by letter dated October 14, 2019, we provided on behalf of the Dallas Central Appraisal District ("DCAD") a predetermination letter regarding the above Project.

Since the date of our letter you advised that your initial request contained a misstatement. You now advise that the general partner of Partnership will not be wholly-owned by Garland Housing Finance Corporation ("GHFC") as stated in your initial letter. Instead, Partnership's general partner will be 95% owned by GHFC and 5% by RJSE Residential Construction, LP, an entity that has been certified by the Comptroller as an historically underutilized business ("HUB"). The partnership's financing requires that the HUB have at least a 5% ownership interest in its general partner. You further advise that notwithstanding that the HUB will own 5% of the general partner, control of the general partner (and, by extension, Partnership) will remain with GHFC. Further, GHFC will continue to retain all of the components of equitable title that were outlined in the original letter.


Based on the change of the transaction as set forth above, the Project will not be exempt from taxation by virtue of Section 11.11 of the Tax Code and Chapter 394 of the Act.

This letter is a non-binding advisory determination and is subject to the actual facts should the transaction occur. This letter is not binding on DCAD and does not affect the DCAD Chief Appraiser's determination to grant or deny an exemption for the subject property.

Thank you for your attention to this matter, and should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

**NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.**

By: 
Peter G. Smith

PGS:tlo

cc: W. Kenneth Nolan (*Via Email*)
Elizabeth Sarles (*Via Email*)
Brad Neighbor, Garland City Attorney (*Via Email*)

1d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JANUARY 14, 2021

Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed for:

20011	Canal Lofts	Houston
20015	New Caney Oaks (I & II)	New Caney
20075	New Hope Housing Savoy	Houston
20077	Lockwood South Apartments	Houston
20082	Connect South Apartments	Houston
20097	Regency Lofts	Houston
20100	Southlawn at Milby	Houston
20140	Richmond Senior Village	Houston
20179	Avanti West	Edinburg
20204	Heritage Senior Residence	Houston
20223	Campanile on Briar Hollow	Houston
20248	Cedar Cove Apartments	Sealy
20251	Mathis Apartments	Mathis
20281	Bayou Bend Apartments	Waller
20329	Fishpond at Huntsville	Huntsville

RECOMMENDED ACTION

WHEREAS, an award of 2020 Competitive (9%) Housing Tax Credits was approved for each of the above-listed applications by the Board on July 23, 2020;

WHEREAS, each Applicant was awarded points under 10 TAC §11.9(c)(8) of the 2020 Qualified Allocation Plan (QAP), related to Readiness to Proceed in Disaster Impacted Counties (RTP), which requires that the Developments close all financing and fully execute a construction contract on or before the last business day of November 2020;

WHEREAS, per 10 TAC §11.9(c)(8), failure to close all financing and provide evidence of an executed construction contract by the November deadline may result in penalty under 10 TAC §11.9(f), which authorizes the Board to find that an Applicant or Affiliate be ineligible to compete in the 2021 Application Round or that it should be assigned a penalty deduction, to be determined solely by the Board;

WHEREAS, the above-listed Applicants informed the Department that due to circumstances outside of the Applicants' control, including circumstances related to the ongoing COVID-19 Pandemic, delays in closing financing provided by the City of Houston, or delays caused

by a reorganization and functional realignment of the U.S. Department of Agriculture (USDA)'s Multifamily Housing Program of the Production and Preservation Division, the Developments would fail to close all financing by the last business day of November 2020;

WHEREAS, 10 TAC§11.9(f) does not require that staff recommend ineligibility or penalty to the Board, if the delay in closing financing was caused by something the Developments could not have anticipated or prevented; and

WHEREAS, staff has reviewed the documentation provided by each Applicant, and has affirmatively found that the failure to close all financing and provide evidence of an executed construction contract by the November deadline could not have been anticipated or prevented, and therefore recommends that no penalties be imposed;

NOW, therefore, it is hereby

RESOLVED, the Board affirmatively finds that the inability to meet the Readiness to Proceed deadline was beyond the reasonable control of these Applicants and could not have been reasonably anticipated, and imposes no penalty under 10 TAC §11.9(f) on these Applicants, for failure to close all financing and provide evidence of an executed construction contract by the November deadline as required under 10 TAC §11.9(c)(8), related to Readiness to Proceed in Disaster Impacted Counties.

BACKGROUND

Awards to the Developments were approved by the Board on July 23, 2020. Each Application was awarded points under 10 TAC §11.9(c)(8) of the 2020 Qualified Allocation Plan (QAP) related to Readiness to Proceed in Disaster Impacted Counties, which states in pertinent part:

“An Application for a proposed Development that is located in a county declared by the Federal Emergency Management Agency to be eligible for individual assistance within three years preceding December 1, 2019, that provides a certification that they will close all financing and fully execute the construction contract on or before the last business day of November or as otherwise permitted under subparagraph (C) of this paragraph. For the purposes of this paragraph only, an Application may be designated as ‘priority.’ (5 points)

(A) Applications must include evidence that appropriate zoning will be in place at award and acknowledgement from all lenders and the syndicator of the required closing date.

(B) The Board cannot and will not waive the deadline and will not consider waiver under its general rule regarding waivers. Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.”

The Department directed Applicants to provide evidence that all financing was closed, and that a construction contract had been fully executed on or before the last business day of November 2020. Staff contacted each Applicant individually regarding this non-statutory deadline. All Applicants described below confirmed financing did not close by the deadline. All Applicants also confirmed no fully executed construction contracts were timely provided.

Pursuant to 10 TAC §11.9(c)(8), the Applicants are subject to penalty under 10 TAC §11.9(f), as determined solely by the Board. Nevertheless, 10 TAC §11.9(f) related to Factors Affecting Scoring and Eligibility in current and future Applicant Rounds, relevantly states:

“For those items pertaining to non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated.”

Staff notified each Applicant that the matter would be presented to the Board at this meeting. All Applicants submitted penalty “waiver” requests (though actually requests for an exception the penalty) describing circumstances beyond the reasonable control of the Applicants that could not have been anticipated. The specific circumstances of each are summarized as follows:

HOUSTON

Applicants with CDBG-DR awards from the City of Houston have informed the Department that, due to delays largely related to the ongoing negotiations regarding the U.S. Department of Housing and Urban Development (HUD)’s Community Development Block Grant Disaster Recovery (CDBG-DR) funds with the General Land Office (GLO), the Developments would fail to close all financing by the last business day of November 2020. Applicants impacted by these delays are:

20011	Canal Lofts	Houston
20075	New Hope Housing Savoy	Houston
20077	Lockwood South Apartments	Houston
20082	Connect South Apartments	Houston
20097	Regency Lofts	Houston
20100	Southlawn at Milby	Houston
20140	Richmond Senior Village	Houston
20204	Heritage Senior Residences	Houston
20223	Campanile on Briar Hollow	Houston

New Caney Oaks (20015)

On November 24, 2020, the Applicant and the U.S. Department of Agriculture (USDA) notified the Department of expected closing delays for developments receiving financing from Rural Development of the Multifamily Housing Program, Production and Preservation Division of USDA. Per the USDA email, USDA recently underwent a reorganization with related functional realignments that caused delays to the Applicant’s financing. The Applicant’s waiver request

confirms its closing delays were related to USDA's reorganization, which was neither expected nor within the control of the Applicant. The request also addresses delays partly due to the ongoing COVID-19 Pandemic, which is a Major Disaster. If not for the USDA delays and Major Disaster, the Applicant would have timely closed on its financing.

Avanti West (20179)

On December 3, 2020, the Applicant notified the Department that it was not able to close on its financing and fully execute its construction contract until December 2, 2020. Per the Applicant's waiver request, the delays in closing were largely due to the ongoing COVID-19 Pandemic. Beginning October 29, 2020, the Applicant began experiencing difficulties communicating with the seller, who was responsible for completing the outstanding tasks necessary for the title company to approve the release of funds related to the transaction. The Applicant contacted the seller on a daily basis. The seller did not respond until November 16, 2020, when the Applicant became aware of the Seller's ongoing COVID-related illness. If not for the delays related to the ongoing COVID-19 Pandemic, the Applicant claims financing would have been completed prior to the November deadline.

Cedar Cove Apartments (20248)

On November 19, 2020, the Applicant notified the Department that the U.S. Department of Agriculture (USDA) expected closing delays for Cedar Cove Apartments (20248). Per the email from USDA, of November 17, 2020, USDA recently underwent a reorganization with related functional realignments that caused delays to Applicants receiving financing from its Multifamily Housing Program. The Applicant's waiver request confirms this and claims its closing delays were largely related to this USDA reorganization, which was neither foreseeable nor within the control of the Applicant. If not for the USDA delays, the Applicant would have timely closed on its financing.

Mathis Apartments (20251)

On November 3, 2020, the Applicant notified the Department that the U.S. Department of Agriculture (USDA) expected closing delays for Mathis Apartments (20251). Per a November 24, 2020 email from USDA, USDA recently underwent a reorganization with related functional realignments that caused delays to Applicants receiving financing from its Multifamily Housing Program. The Applicant's waiver request confirms this and claims its closing delays were largely related to this USDA reorganization, which was neither foreseeable nor within the control of the Applicant. The request also addresses significant delays due to the ongoing COVID-19 Pandemic, which is a major disaster. If not for the USDA delays and major disaster, the Applicant claims it would have timely closed on its financing.

Bayou Bend Apartments (20281)

On November 17, 2020, the Applicant notified the Department that the U.S. Department of Agriculture (USDA) expected closing delays for Bayou Bend Apartments (20281). Per the emails from USDA and the Applicant, dated November 17, 2020, USDA had undergone a reorganization with related functional realignments that caused delays to Applicants receiving financing from its Multifamily Housing Program. The Applicant's waiver request confirms this and claims its closing delays were largely related to this USDA reorganization, which was neither foreseeable nor within

the control of the Applicant. If not for the USDA delays, the Applicant would have timely closed on its financing.

Fish Pond at Huntsville (20329)

Due to circumstances outside the control of the Applicant, on December 10, 2020, the Board approved staff's recommendation that Applicant 20329 (Fish Pond at Huntsville) not be subject to penalty under 10 TAC §11.9(f) of the 2020 QAP. Accordingly, staff respectively reaffirm this recommendation.

20011

Canal Lofts

From: [Nathan Kelley](#)
To: [Alena Morgan](#)
Cc: [Marni Holloway](#); [Matt Fuqua](#)
Subject: 20011 - NH Canal LP - Readiness to Proceed Closing Deadline - Penalty Waiver Request
Date: Monday, November 30, 2020 11:34:56 AM
Attachments: [image001.jpg](#)

Ms. Morgan,

Good morning. I hope that you had a good Thanksgiving holiday. Please be aware that I have uploaded a request for a waiver of the penalty related to our inability to close the financing of NH Canal LP (20011) by the November 30, 2020 readiness to proceed deadline. I'm available to answer any questions you have once you've had a chance to review the request.

Kind regards,

Nathan L. Kelley
Blazer Building Texas, LLC
Nantucket Housing, LLC
713.914.9200 (O)
281.782.7078 (M)



4001 W. Sam Houston Pkwy. N. * Suite 100 * Houston * Texas * 77043

NOTICE: This e-mail message and all attachments transmitted with it are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by replying to this message and please delete it from your computer.

NH Canal LP

November 30, 2020

Texas Dept. of Housing & Community Affairs
Attn: Alena Morgan
221 E. 11th Street
Austin, TX 78701
Delivered via email: alena.morgan@tdhca.state.tx.us

Re: Canal Lofts (20011)
Waiver Request for Readiness to Proceed Deadline

Dear Ms. Morgan,

Please accept this letter as NH Canal LP, Canal Street Developers LLC, and its Affiliates' (the "Sponsor") waiver request for application 20011, Canal Lofts. The application is unable to meet the closing requirements outlined in 11.9(c)(8), related to Readiness to Proceed. Per this scoring item, "failure to close all financing and provide evidence of an executed contract by the November deadline will result in penalty under 10 TAC 11.9(f) as determined solely by the Board.

We respectfully request that the Board grant the exception under 10 TAC 11.9 (f) of the 2020 Qualified Allocation Plan, and not assess a penalty on the Sponsor in the subsequent 2021 9% Competitive Program.

We have been diligently working to meet the closing deadline, but due to various factors brought on by the pandemic, will be unable to do so. Based on our prior experience utilizing CDBG-DR funding, we tried to get an early jump on the environmental preclearance process and ultimately submitted to the City of Houston on August 6th. After the City and the Texas General Land Office's diligent review of the request, we received the Authority to Use Grant Funds ("AUGF") for 20011-Canal Lofts on November 24th. With the AUGF now in hand, our \$12 million CDBG-DR loan is scheduled to be presented to the City of Houston City Council for final approval on December 9, 2020. This funding component is critical to the financial feasibility of the project.

Next, Bank of America ("BofA"), our construction lender and tax credit equity provider, has indicated that they are unable to close any earlier than February 2021 due to pandemic-related staffing constraints. We explored other options for both financing components but received similar feedback from other potential partners. We worked aggressively to expedite their timeline and had multiple calls with the bank's senior Community Development Banking leadership expressing the need to close sooner. Because of a backlog of other transactions from earlier in the year created by pandemic-related delays, BofA doesn't have the human capital to allocate to our deal any sooner than early 2021. We have already sent them the lion's share of the due diligence items, so that they'll be able to quickly turn their attention to getting our transaction closed as soon as staff is available.

NH Canal LP

While the delay getting City Council approval and our debt and equity closed is beyond our control and I would like to submit evidence of our efforts to date. Specifically, I have enclosed the following items.

1. Executed Contract and Master Subcontract
2. Construction Schedule
3. Authority to Use Grant Funds
4. Construction Lender & Equity Letter noting closing timeline

I'd also like to note that the proposed postponement of the Readiness to Proceed provision in the draft 2021 QAP evidences the persistent challenges the pandemic has created.

Considering our efforts to date and the extenuating circumstances brought about by the pandemic, I respectfully request Staff make a recommendation to the Board that no penalty be assessed under 10 TAC §11.9(f), on the Sponsor in the subsequent 2021 9% Competitive Program.

Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nathan L. Kelley". The signature is fluid and cursive, with a large initial "N" and "K".

Nathan L. Kelley
(281) 833-1086 (O)



AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 24th day of November in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

NH CANAL LP, a Texas limited partnership
4001 W. Sam Houston Pkwy N., Suite 100
Houston, TX 77043

and the Contractor:
(Name, legal status, address and other information)

Education Based Housing, Inc.
4001 W. Sam Houston Pkwy N., Suite 100
Houston, TX 77043

for the following Project:
(Name, location and detailed description)

Canal Lofts
5601 Canal Street
Harris County, Houston, Texas 77011
A 150 Unit Multi-Family Community

The Architect:
(Name, legal status, address and other information)

Mucasey & Associates, Architects
4808 Gibson, #200
Houston, TX 77007

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The Date of Commencement shall be upon the last of the following to occur:

1. Issuance of a Notice to Proceed to the Contractor from the Owner;
2. Issuance of all necessary building permits for the performance of the Work; and
3. All encumbrances or other impediments to commencement and diligent prosecution of the Work have been satisfied to the reasonable satisfaction of Contractor.

Construction shall commence within ten (10) days of the Date of Commencement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

Init.

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

Not later than **Five Hundred Seventy-six (576)** calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **TWENTY-THREE MILLION SEVENTY-SEVEN THOUSAND TWENTY-ONE DOLLARS AND NO CENTS (\$23,077,021.00)**, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
See attached Exhibit J	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
See attached Exhibit J		

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

There are no liquidated damages

§ 4.6 Other:
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the tenth (10th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may reasonably require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction (modified), and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner (such approval not to be unreasonably withheld, conditioned or delayed), suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017 (modified);
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017 (modified); and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

Init.

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%) until the Work is fifty percent (50%) complete (or until such time as Owner has retained five percent [5%] of the Contract Sum, whichever is earlier).

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

No retainage shall be subtracted from progress payments once the Work is fifty percent (50%) complete and Owner has retained a total of five percent (5%) of the Contract Sum.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017 (modified).

§ 5.1.9 Except with the Owner's prior approval (such approval not to be unreasonably withheld, conditioned or delayed), the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017 (modified), and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect; provided, however, if the failure to issue such Certificate for Payment is not related to the Work or as a result of the fault of the Contractor, then the final payment shall be made upon completion of the Work as set forth in 5.2.1.1 above..

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment/

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Interest Rate to be Prime plus two percent (2%) per annum.

Init.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 (modified), unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017 (modified), the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017 (modified)
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017 (modified).

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor in accordance with the terms and provisions of Article 14 of AIA Document A201-2017 (modified).

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 (modified) or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Chris Richardson
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, TX 77043

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Init.

Jarvis Taylor
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, Texas 77043

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017 (modified), may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

.1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor (modified)

.2 AIA Document

(Paragraphs deleted)

E203™-2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

(Paragraph deleted)

.3 Drawings

Number	Title	Date
See attached Exhibit H		

.4 Specifications

Section	Title	Date	Pages
See attached Exhibit H			

.5 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract

Init.

Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.6 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Exhibit A – Legal Description

Exhibit B – AIA Document A201™-2017, General Conditions of the Contract for Construction (modified)

Exhibit C1 – Conditional Waiver & Release on Progress Payment

Exhibit C2 – Unconditional Waiver & Release on Progress Payment

Exhibit D1 – Conditional Waiver & Release on Final Payment

Exhibit D2 – Unconditional Waiver & Release on Final Payment

Exhibit E – Application and Certificate for Payment

Exhibit F – Continuation Sheet

Exhibit G – Change Order

Exhibit H – List of Contract Drawings and Specifications

Exhibit I – Completion Schedule

Exhibit J – Qualifications dated November 24, 2020

Exhibit K – Form of Notice to Proceed

Exhibit L – Insurance Certificate

Exhibit M – EBH 501 (c)(3) Tax Exempt Letter

Exhibit N – Sales Tax Exempt Certificate

Exhibit O – Acceptance Letter Sample

Init.

This Agreement entered into as of the day and year first written above.

NH CANAL LP,
a Texas limited partnership

EDUCATION BASED HOUSING, INC.

By: NH CANAL GP LLC,
a Texas limited liability company,
its general partner



OWNER (Signature)

H. Chris Richardson, Manager
(Printed name and title)



CONTRACTOR (Signature)

Jarvis Taylor, Executive Director
(Printed name and title)

Init.

EXHIBIT A

LEGAL DESCRIPTION

SUBDIVISION OF A 2.835 ACRE TRACT OF LAND, SITUATED IN THE S.M. WILLIAMS SURVEY, A-87, HARRIS COUNTY, TEXAS BEING THE WEST 300.00 FEET OF LOT 37, NEILS ESPERSON INDUSTRIAL DISTRICT, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 9, PAGE 29 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS AND BEING THAT CERTAIN CALLED 2.838 ACRE TRACT OF LAND DESCRIBED IN DEED AND RECORDED IN THE OFFICIAL PUBLIC RECORDS OF REAL PROPERTY OF HARRIS COUNTY, TEXAS UNDER COUNTY CLERK'S FILE NUMBER E943658.

EXHIBIT B

 **AIA** Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Canal Lofts
5601 Canal Street
Harris County, Houston, TX 77011
A 150 Unit Multi-Family Community

THE OWNER:

(Name, legal status and address)

NH CANAL LP, a Texas limited partnership
4001 W. Sam Houston Pkwy N., Suite 100
Houston, TX 77043

THE ARCHITECT:

(Name, legal status and address)

Mucasey & Associates, Architects
4808 Gibson, #200
Houston, TX 77007

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- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor but only if and to the extent indicated on the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable by a Contractor from them as being necessary to produce the indicated results.

Init.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Contractor may retain one set of the Contract Documents, and any Record Drawings.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

Where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission (including without limitation by electronic mail, as long as receipt is confirmed).

(Paragraphs deleted)

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold a future Certificate for Payment to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the

purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 For a period of one (1) year after Substantial Completion, the Contractor warrants to the Owner and Architect that materials and equipment furnished by the Contractor under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants within the warranty period that the Work completed by the Contractor will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 UPON PAYMENT IN FULL OF ALL SUMS DUE TO CONTRACTOR, CONTRACTOR SHALL MAKE A NON-EXCLUSIVE ASSIGNMENT TO OWNER OF ALL OF CONTRACTOR'S RIGHTS TO ENFORCE CONTRACTOR'S EXPRESS AND IMPLIED SUBCONTRACTOR AND SUPPLIER WARRANTIES, WITHOUT RECOURSE. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR PURPOSE, HABITABILITY, CONSTRUCTABILITY, AND ALL LIABILITY FOR DESIGN FURNISHED BY ANYONE OTHER THAN CONTRACTOR. THIS PROVISION SUPERCEDES ALL OTHER CONFLICTING PROVISIONS, IF ANY, FOUND ELSEWHERE IN THE CONTRACT DOCUMENTS.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the

operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail reasonably appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, one copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of the approved Shop Drawings, Product Data, Samples, and similar required submittals. These may be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

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for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. If Contractor needs to use a crane or other equipment which may swing over adjacent property, Contractor shall notify Owner. It shall then be the Owner's responsibility to secure necessary approvals, or otherwise equitably adjust the Contract Documents to accommodate other means and methods of construction, and any delays.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 Contractor's indemnity obligation in 3.18 and elsewhere in this Agreement shall be limited to and funded by the proceeds, if any, of Contractor's insurance policy(ies), which may be applicable. Owner has reviewed Contractor's insurance program and satisfied itself that Contractor's insurance coverage is adequate for this and all other purposes. Contractor shall request its commercial general insurance carrier to name Owner as an additional insured on said policy during the term of this Project, or until this Contract is completed or terminated, whichever is earlier.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

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Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. Owner and Contractor may communicate directly with each other. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. Failure of the Architect to timely perform this function shall not relieve the Owner of its obligations to pay Contractor timely.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, but shall not delay the Project. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 The Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be subject to Article 1.2.1 hereof and consistent with the intent of the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will

be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Subject to Article 3.5.1 hereof, each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation, but Contractor shall have no responsibility for the means, methods, or safety of Owner's own forces or other contractors, their subcontractors and employees. Contractor is not responsible for coordination of the labor, materials, or work performed by such other forces and contractors.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate

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Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone, if it does not cause an increase in Contractor's time of performance or cost of the Work.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum;
- .3 The extent of the adjustment, if any, in the Contract Time, and
- .4 The method of adjustment of the Contractor's Fee for changes in the work:
 - a. The Contractor's Fee on all increases in the Cost of the Work shall be Fifteen percent (15%),
 - b. The Contractor's Fee will not be adjusted for any decrease in the Cost of the Work.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work, if no changes are necessary.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect and/or Owner may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents, and in such event such other provisions shall control.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner or Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the

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data to substantiate its accuracy, required by the Architect. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner or Architect and supported by such data to substantiate its accuracy as the Owner or Architect (as the case may be) may reasonably require, and shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 damage to the Owner or a Separate Contractor;
- .5 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .6 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

(Paragraph deleted)

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment and Owner shall obtain a release from the Subcontractor in favor of Owner and Contractor for such payments to subcontractors.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fully and timely fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier for labor or supplies which Owner has previously paid. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall promptly notify the Contractor. The Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount due, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use as indicated by the Contract Documents.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have

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accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid, will be paid out of the proceeds of Owner's final payment to Contractor, or otherwise will be satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment, if any, is currently in effect, (3) a written statement that the Contractor knows of no material reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties required by the Contract Documents, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor files a lien and refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by a Subcontractor or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by law, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be taking reasonable precautions for safety at the Project. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall take reasonable precautions to not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily

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injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify, defend, and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is proven to be due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall defend and indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Notwithstanding the foregoing, Owner shall obtain and maintain at all times (and upon request by Contractor, shall furnish evidence to Contractor of same) insurance in which Contractor is named as an additional insured to cover Owner's obligations to Contractor under Articles 3, 6 and 10.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by any applicable insurance, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar

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written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed.

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Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 Subject to Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers, except as permitted in the Contract Documents;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice and opportunity to cure, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred prior to and by reason of the termination, including costs attributable to termination of Subcontracts; and reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

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§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of

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the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraph deleted)

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a

Init.

written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

EXHIBIT C1

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Project: Canal Lofts
Job No:

On receipt by the signer of this document of a check from NH CANAL LP in the sum of \$_____ payable to Education Based Housing, Inc. and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Canal Lofts located at 5601 Canal Street, Houston, Texas 77011, to the following extent:

150 Unit Multi-Family Community

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to NH CANAL LP as indicated in the attached statement(s) or progress payment request (s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

EXECUTED this the ____ day of _____, 20____.

Education Based Housing, Inc.
General Contractor

By: _____
Printed Name: Jarvis Taylor
Title: Executive Director

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority, on this the ____ day of _____, 20____.

Notary Public, State of Texas

EXHIBIT C2

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Project: Canal Lofts
Job No:

The signer of this document has been paid for the sum of \$_____ for all labor, services, equipment, or materials furnished to the property or to NH CANAL LP on the property of Canal Lofts located at 5601 Canal Street, Houston, Texas 77011, to the following extent:

150 Unit Multi-Family Community

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to NH CANAL LP as indicated in the attached statement(s) or progress payment requests (s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

EXECUTED this the _____ day of _____, 20____.

Education Based Housing, Inc.
(General Contractor)

By: _____
Printed Name: Jarvis Taylor
Title: Executive Director

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority, on this the _____ day of _____, 20____.

Notary Public, State of Texas

EXHIBIT D1

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Project: Canal Lofts
Job No.

On receipt by the signer of this document of a check from NH CANAL LP the sum of \$_____ payable to Education Based Housing, Inc. and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of Canal Lofts located at 5601 Canal Street, Houston, Texas 77011, to the following extent:

150 Unit Multi-Family Community

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to NH CANAL LP.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

EXECUTED this the _____ day of _____, 20__.

Education Based Housing, Inc.
(General Contractor)

By: _____

Printed Name: Jarvis Taylor
Title: Executive Director

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority, on this the ____ day of _____, 20__.

Notary Public, State of Texas

EXHIBIT D2

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU TO SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Project: Canal Lofts
Job No.

The signer of this document has been paid in full in the amount of \$ _____ for all labor, services, equipment, or materials furnished to the property or to NH CANAL LP located at 5601 Canal Street, Houston, Texas 77011, to the following extent:

150 Unit Multi-Family Community

The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

EXECUTED this the _____ day of _____, 20__.

Education Based Housing, Inc.
(General Contractor)

By: _____
Printed Name: Jarvis Taylor
Title: Executive Director

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority, on this the ____ day of _____, 20__.

Notary Public, State of Texas

EXHIBIT E

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

TO NH CANAL LP
 FROM: Education Based Housing, Inc.
 CONTRACT
 FOR: 150 Unit Multi-Family Community

PROJECT: Canal Lofts
 Houston, TX

APPLICATION NO: _____
 PERIOD TO: _____
 ARCHITECT'S PROJECT NO: 2008
 CONTRACT DATE: _____

DISTRIBUTION TO:
 OWNER
 ARCHITECT
 CONTRACTOR

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders approved in previous months by Owner	TOTAL	\$0.00	
Approved this Month	Number		
	Date		
	TOTALS	\$0.00	\$0.00
Net change by Change Orders		\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

OWNER:

BY: _____ DATE: _____

Jarvis Taylor Executive Director

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

- Application is made for Payment, as shown below, in connection with the Contract:
 Continuation Sheet, AIA Document G703, is attached
- ORIGINAL CONTRACT SUM \$23,077,021.00
 - Net change by Change Orders \$0.00
 - CONTRACT SUM TO DATE (Line 1+2) \$23,077,021.00
 - TOTAL COMPLETED & STORED TO DATE
 - RETAINAGE:
 - a. % of Completed Work %
 - b. % of Stored Material %
 (Column F on G703) \$0.00
 - TOTAL EARNED LESS RETAINAGE \$0.00
 (Line 4 less line 5 Total)
 - LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$0.00
 - CURRENT PAYMENT DUE \$0.00
 - BALANCE TO FINISH, PLUS RETAINAGE \$23,077,021.00
 (Line 3 less line 6)

State of: Texas
 Subscribed and sworn to before me this _____ day of _____, 2020

Notary Public: _____
 My Commission expires: _____

AMOUNT CERTIFIED: _____

(Attached explanation if amount certified differs from the amount applied for.)

ARCHITECT: _____
 BY: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA DOCUMENT G703
Continuation Sheet

JOB NAME: **Canal Lofts**

APPLICATION NUMBER: **Zero (0)**
APPLICATION DATE: **1-Jan-01**
PERIOD FROM: **1-Jan-01**
PERIOD TO: **1-Jan-01**
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G	H	I
WORK COMPLETED								
DESCRIPTION OF WORK	SCHEDULED VALUE	This Application			Total Complete & Stored To Date	% comp	Balance to Finish	Retainage Held
		Previous Application	Work in Place	Stored Material				
BUILDING PERMITS	0	0	0	0	0	0%	0	0
BUILDERS RISK INSURANCE	172,784	0	0	0	0	0%	172,784	0
GENERAL LIABILITY	212,467	0	0	0	0	0%	212,467	0
BOND	187,518	0	0	0	0	0%	187,518	0
ROUGH GRADING	628,630	0	0	0	0	0%	628,630	0
ON-SITE CONCRETE (walkways)	0	0	0	0	0	0%	0	0
UTILITIES	804,946	0	0	0	0	0%	804,946	0
ON-SITE CONCRETE (paving)	222,556	0	0	0	0	0%	222,556	0
LANDSCAPING	227,100	0	0	0	0	0%	227,100	0
POOL & DECKING	224,900	0	0	0	0	0%	224,900	0
STAIRS & RAILS	174,230	0	0	0	0	0%	174,230	0
CONCRETE (foundations)	3,947,515	0	0	0	0	0%	3,947,515	0
CARPENTRY	1,292,262	0	0	0	0	0%	1,292,262	0
LUMBER	2,019,321	0	0	0	0	0%	2,019,321	0
TRUSSES	626,263	0	0	0	0	0%	626,263	0
INSULATION	317,870	0	0	0	0	0%	317,870	0
ROOFING	803,573	0	0	0	0	0%	803,573	0
ELECTRICAL	1,454,333	0	0	0	0	0%	1,454,333	0
PLUMBING	1,390,023	0	0	0	0	0%	1,390,023	0
HVAC	608,870	0	0	0	0	0%	608,870	0
FIRE SPRINKLER	510,000	0	0	0	0	0%	510,000	0
DOORS & MILLWORK	432,068	0	0	0	0	0%	432,068	0
WINDOWS	287,619	0	0	0	0	0%	287,619	0
MASONRY / LATH & PLASTER	737,452	0	0	0	0	0%	737,452	0
DRYWALL	978,000	0	0	0	0	0%	978,000	0
TILE WORK	260,134	0	0	0	0	0%	260,134	0
FLOORING	188,907	0	0	0	0	0%	188,907	0
WINDOW TREATMENT	35,500	0	0	0	0	0%	35,500	0
PAINTING	383,577	0	0	0	0	0%	383,577	0
CABINETS	649,600	0	0	0	0	0%	649,600	0
ELEVATORS	197,331	0	0	0	0	0%	197,331	0
APPLIANCES	459,883	0	0	0	0	0%	459,883	0
HARDWARE & ACCESORIES	148,800	0	0	0	0	0%	148,800	0
GENERAL REQUIREMENTS	804,167	0	0	0	0	0%	804,167	0
OVERHEAD	422,206	0	0	0	0	0%	422,206	0
BUILDERS FEE	1,266,616	0	0	0	0	0%	1,266,616	0
CONTINGENCY	0	0	0	0	0	0%	0	0
	0	0	0	0	0	0%	0	0
	0	0	0	0	0	0%	0	0
TOTAL	23,077,021	0	0	0	0	0%	23,077,021	0

TOTAL COMPLETE & STORED TO DATE:	0
LESS RETAINAGE 10% OF SUBCONTRACTS: (to 50% completion then no additional retainage)	0
TOTAL EARNED LESS RETAINAGE:	0
LESS PREVIOUS CERT. FOR PAYMENT:	0
CURRENT AMOUNT DUE THIS APPLICATION:	0

EXHIBIT G

EDUCATION BASED HOUSING, INC.

PROJECT: Canal Lofts
5601 Canal Street
Houston, TX 77011

Change Order Number: _____

Date: _____

CONTRACTOR: Education Based Housing, Inc.
4001 W. Sam Houston Pkwy. N.
Suite 100
Houston, Texas 77043

Architects Project Number: 2008

Contract Date: _____

Contract For: 150 Unit Multi-Family Community

We are requesting the following changes to the Work:

The original Contract Sum was: _____

The net change by previously authorized Change Orders: _____

The Contract Sum prior to this Change Order was: _____

The Contract Sum will be increased by this Change Order in the amount of: _____

The new Contract Sum including this Change Order will be: _____

Schedule will be impacted by _____

_____ \$0

_____ \$0
_____ Days

Mucasey & Associates, Architects
Architect (Firm Name)
4808 Gibson, Suite 200, Houston, TX
77007
Address

Education Based Housing, Inc.
Contractor (Firm Name)
4001 W. Sam Houston Pkwy. N., Suite
100, Houston, TX 77043
Address

NH CANAL LP, a Texas limited
partnership, By: NH CANAL GP LLC, a
Texas limited liability company, its
general partner
Owner (Firm Name)
4001 W. Sam Houston Pkwy. N., Suite 100,
Houston, TX 77043
Address

By (Signature)
Mark Mucasey
(Typed Name)

By (Signature)
Jarvis Taylor, Executive Director
(Typed Name)

By (Signature)
H. Chris Richardson, Manager
(Typed Name)

Date

Date

Date

EXHIBIT H
CANAL LOFTS
PLAN LIST

SHEET #:	Architectural Drawings - Permit Issue prepared by MUCASEY & ASSOCIATES, ARCHITECTS	DATE:
A.00	Cover	9/25/2020
A1.0	Code Summary & List of Drawings	9/25/2020
A1.1	Site Plan - Parking Level & Project Summary	9/25/2020
A1.2	Site Plan - Upper levels	9/25/2020
A1.3	Site Details	9/25/2020
A1.4	Grille House - Plans & Elevations	9/25/2020
A1.5	Grille House - Section	9/25/2020
A1.6	Grille House - Sections	9/25/2020
A1.7	Pool Plan	9/25/2020
A1.8	Roof Terrace - Plan	9/25/2020
A2.1	Unit Plans - Unit A1, A2 & A3 HC	9/25/2020
A2.2	Unit Plans - Units B1, B2 & B3 HC	9/25/2020
A2.3	Unit Plans - Units C1	9/25/2020
A2.4	Unit Plans - Units C2 & C3 HC	9/25/2020
A3.1	First Floor Plan (Partial)	9/25/2020
A3.2	First Floor Plan (Partial)	9/25/2020
A3.3	First Floor Plan (Partial)	9/25/2020
A3.4	First Floor Plan (Partial)	9/25/2020
A3.5	Second Floor Podium Plan (Partial)	9/25/2020
A3.6	Second Floor Podium Plan (Partial)	9/25/2020
A3.7	Second Floor Podium Plan (Partial)	9/25/2020
A3.8	Second Floor Podium Plan (Partial)	9/25/2020
A3.9	Second Floor Plan (Partial)	9/25/2020
A3.10	Second Floor Plan (Partial)	9/25/2020
A3.11	Second Floor Plan (Partial)	9/25/2020
A3.12	Second Floor Plan (Partial)	9/25/2020
A3.13	Third Floor Floor Plan (Partial)	9/25/2020
A3.14	Third Floor Floor Plan (Partial)	9/25/2020
A3.15	Third Floor Floor Plan (Partial)	9/25/2020
A3.16	Third Floor Floor Plan (Partial)	9/25/2020
A3.17	Fourth Floor Floor Plan (Partial)	9/25/2020
A3.18	Fourth Floor Floor Plan (Partial)	9/25/2020
A3.19	Fourth Floor Floor Plan (Partial)	9/25/2020
A3.20	Fourth Floor Floor Plan (Partial)	9/25/2020
A3.21	Roof Plan (Partial)	9/25/2020
A3.22	Roof Plan (Partial)	9/25/2020
A3.23	Roof Plan (Partial)	9/25/2020
A3.24	Roof Plan (Partial)	9/25/2020
A3.25	Stair Enlarged Plans	9/25/2020
A3.26	Stair Enlarged Plans	9/25/2020
A3.27	Stair Enlarged Plans	9/25/2020
A3.28	Stair Enlarged Plans	9/25/2020
A3.29	Stair Enlarged Plans	9/25/2020
A3.30	Life Safety Plan - Parking Level	9/25/2020
A3.31	Life Safety Plan - Parking Level	9/25/2020
A3.32	Life Safety Plan - Parking Level	9/25/2020
A3.33	Life Safety Plan - Parking Level	9/25/2020
A4.1	Exterior Elevations	9/25/2020
A4.2	Exterior Elevations	9/25/2020
A4.3	Exterior Elevations	9/25/2020
A4.4	Exterior Elevations	9/25/2020
A4.5	Exterior Elevations	9/25/2020
A4.6	Exterior Elevations	9/25/2020
A4.7	Exterior Elevations	9/25/2020
A4.8	Exterior Elevations	9/25/2020
A4.9	Exterior Elevations	9/25/2020
A4.10	Exterior Elevations	9/25/2020
A4.11	Exterior Elevations	9/25/2020
A4.12	Exterior Elevations	9/25/2020
A4.13	Exterior Elevations	9/25/2020
A4.14	Exterior Elevations	9/25/2020

A5.1	Interior Elevations	9/25/2020
A5.2	Interior Elevations	9/25/2020
A5.3	Interior Elevations	9/25/2020
A6.1	Stair #1, Elevator #1 Section & Details	9/25/2020
A6.2	Stair #2, Roof Access Stair #1 & Details	9/25/2020
A6.3	Stair #3 Section	9/25/2020
A6.4	Stair #4 Section	9/25/2020
A6.5	Stair #6 Section	9/25/2020
A6.6	Elevator #2 Sections	9/25/2020
A6.7	Trash Chute #2 Roof Access #2 Section	9/25/2020
A7.1	Wall Sections	9/25/2020
A7.2	Wall Sections	9/25/2020
A7.3	Wall Sections	9/25/2020
A7.4	Wall Sections	9/25/2020
A7.5	Wall Sections	9/25/2020
A7.6	Wall Sections	9/25/2020
A7.7	Wall Sections	9/25/2020
A8.1	Details	9/25/2020
A8.2	Details	9/25/2020
A8.3	Details	9/25/2020
A8.4	Details	9/25/2020
A8.5	Details	9/25/2020
A8.6	Details	9/25/2020
A8.7	Details	9/25/2020
A8.8	Details	9/25/2020
A9.1	Amenity Center - First Floor Plan	9/25/2020
A9.2	Amenity Center - Second Floor Plan	9/25/2020
A9.3	Amenity Center - Section	9/25/2020
A9.4	Amenity Center - Section	9/25/2020
A9.5	Amenity Center - Section	9/25/2020
A9.6	Amenity Center - Section	9/25/2020
A9.7	Amenity Center - Section	9/25/2020
A9.8	Amenity Center - Wall Sections	9/25/2020
A9.9	Amenity Center - Interior Elevations	9/25/2020
A9.10	Amenity Center - Interior Elevations	9/25/2020
A10.1	Door, Window, Finish Schedules	9/25/2020
A10.2	Fire Assembly Legend; Fire Assemblies	9/25/2020
A10.3	Fire Assembly Legend; Fire Assemblies	9/25/2020
A10.4	Fire Assembly Legend; Fire Assemblies	9/25/2020
A10.5	Fire Assembly Legend; Fire Assemblies	9/25/2020
A10.6	Penetration Fire Assemblies	9/25/2020
A10.7	Penetration Fire Assemblies	9/25/2020
A11.1	Fair Housing & TAS (Texas Accessibility Standards)	9/25/2020
A11.2	TAS Texas Accessibility Standards	9/25/2020
A11.3	TAS Texas Accessibility Standards	9/25/2020
A11.4	TAS Texas Accessibility Standards	9/25/2020
A11.5	TAS Texas Accessibility Standards	9/25/2020
A11.6	TAS Texas Accessibility Standards	9/25/2020

Interior Design Drawings - Issue for Pricing prepared by KATHY ANDREWS INTERIORS

ID0.00	Cover Sheet	11/20/2020
ID1.01	Interior Floor Plan - First Floor	11/20/2020
ID1.02	Interior Floor Plan - Second Floor	11/20/2020
ID2.01	Decorative Power & Data - First Floor	11/20/2020
ID2.02	Decorative Power & Data - Second Floor	11/20/2020
ID4.01	Finish Floor Plan - First Floor	11/20/2020
ID4.02	Finish Floor Plan - Second Floor	11/20/2020
ID7.01	Interior Elevations	11/20/2020
ID7.02	Interior Elevations	11/20/2020
ID7.03	Interior Elevations	11/20/2020
ID8.21	Custom Millwork Details	11/20/2020
ID9.11	Finish Specification, Appliance, Hardware & Plumbing Specifications	11/20/2020
ID9.41	Unit Specifications	11/20/2020

Civil Private Drawings - Permit Issue prepared by WARD, GETZ & ASSOCIATES, LLP

C0.0	Cover	9/25/2020
C0.1	General Notes	9/25/2020
C1.0	Overall Site Plan	9/25/2020
C2.1	Storm Water Pollution Prevention Plan	9/25/2020

C2.2	Storm Water Pollution Prevention Plan Details	9/25/2020
C3.0	Dimension Control Plan	9/25/2020
C4.0	Grading Plan	9/25/2020
C5.0	Utility Plan	9/25/2020
C6.0	Drainage Area Map and Calculations	9/25/2020
C7.0	Utility Details	9/25/2020
C8.0	Paving Details	9/25/2020
C9.1	Underground Detention Details (1 of 6)	9/25/2020
C9.2	Underground Detention Details (2 of 6)	9/25/2020
C9.3	Underground Detention Details (3 of 6)	9/25/2020
C9.4	Underground Detention Details (4 of 6)	9/25/2020
C9.5	Underground Detention Details (5 of 6)	9/25/2020
C9.6	Underground Detention Details (6 of 6)	9/25/2020

Civil Offsite Drawings - Permit Issue prepared by WARD, GETZ & ASSOCIATES, LLP

1	Cover	9/11/2020
2	General Notes	9/11/2020
3	Overall Site Plan	9/11/2020
4	Plan & Profile - 8" Water Line & 8" Sanitary Sewer	9/11/2020
5	Plan & Profile - 24" Storm Sewer & 12" Storm Sewer Enchroachment	9/11/2020
6	Miscellaneous Details	9/11/2020

Structural Drawings - Permit Issue prepared by GERALD T. WYNNE, P.E.

S0-10	General Notes & Specifications	9/25/2020
S0-20	General Notes & Specifications	9/25/2020
S0-30	General Notes & Specifications	9/25/2020
S1-10	Foundation Plan (Overall)	9/25/2020
S1-10A	Foundation Plan (Partial)	9/25/2020
S1-10B	Foundation Plan (Partial)	9/25/2020
S1-10C	Foundation Plan (Partial)	9/25/2020
S1-10D	Foundation Plan (Partial)	9/25/2020
S1-11	Second Floor Podium Forming Plan (Overall)	9/25/2020
S1-11A	Second Floor Podium Forming Plan (Partial)	9/25/2020
S1-11B	Second Floor Podium Forming Plan (Partial)	9/25/2020
S1-11C	Second Floor Podium Forming Plan (Partial)	9/25/2020
S1-11D	Second Floor Podium Forming Plan (Partial)	9/25/2020
S1-12	Second Floor Podium PT Layout Plan (Overall)	9/25/2020
S1-12A	Second Floor Podium PT Layout Plan (Partial)	9/25/2020
S1-12B	Second Floor Podium PT Layout Plan (Partial)	9/25/2020
S1-12C	Second Floor Podium PT Layout Plan (Partial)	9/25/2020
S1-12D	Second Floor Podium PT Layout Plan (Partial)	9/25/2020
S1-13	Second Floor Podium Rebar Layout Plan (Overall)	9/25/2020
S1-13A	Second Floor Podium Rebar Layout Plan (Partial)	9/25/2020
S1-13B	Second Floor Podium Rebar Layout Plan (Partial)	9/25/2020
S1-13C	Second Floor Podium Rebar Layout Plan (Partial)	9/25/2020
S1-13D	Second Floor Podium Rebar Layout Plan (Partial)	9/25/2020
S1-14	Grille House Foundaiton and Framing Plans	9/25/2020
S1-20	Third Floor Framing Plan (Overall)	9/25/2020
S1-20A	Third Floor Framing Plan (Partial)	9/25/2020
S1-20B	Third Floor Framing Plan (Partial)	9/25/2020
S1-20C	Third Floor Framing Plan (Partial)	9/25/2020
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S1-21A	Fourth Floor Framing Plan (Partial)	9/25/2020
S1-21B	Fourth Floor Framing Plan (Partial)	9/25/2020
S1-21C	Fourth Floor Framing Plan (Partial)	9/25/2020
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S1-30	Roof Framing Plan (Overall)	9/25/2020
S1-30A	Roof Framing Plan (Partial)	9/25/2020
S1-30B	Roof Framing Plan (Partial)	9/25/2020
S1-30C	Roof Framing Plan (Partial)	9/25/2020
S1-30D	Roof Framing Plan (Partial)	9/25/2020
S1-40	Second Floor Bracing Plan (Overall)	9/25/2020
S1-40A	Second Floor Bracing Plan (Partial)	9/25/2020
S1-40B	Second Floor Bracing Plan (Partial)	9/25/2020
S1-40C	Second Floor Bracing Plan (Partial)	9/25/2020
S1-40D	Second Floor Bracing Plan (Partial)	9/25/2020
S1-41	Third Floor Bracing Plan (Overall)	9/25/2020
S1-41A	Third Floor Bracing Plan (Partial)	9/25/2020

S1-41B	Third Floor Bracing Plan (Partial)	9/25/2020
S1-41C	Third Floor Bracing Plan (Partial)	9/25/2020
S1-41D	Third Floor Bracing Plan (Partial)	9/25/2020
S1-42	Fourth Floor Bracing Plan (Overall)	9/25/2020
S1-42A	Fourth Floor Bracing Plan (Partial)	9/25/2020
S1-42B	Fourth Floor Bracing Plan (Partial)	9/25/2020
S1-42C	Fourth Floor Bracing Plan (Partial)	9/25/2020
S1-42D	Fourth Floor Bracing Plan (Partial)	9/25/2020
SD-10	Foundation Details	9/25/2020
SD-11	Foundation Details	9/25/2020
SD-12	Concrete Column & Wall Schedules	9/25/2020
SD-13	Elevated PT Slab Details	9/25/2020
SD-14	Elevated PT Slab Details	9/25/2020
SD-15	Elevated PT Slab Details	9/25/2020
SD-16	Elevated PT Slab Details	9/25/2020
SD-17	Elevated PT Slab Details	9/25/2020
SD-20	Floor Framing Details	9/25/2020
SD-21	Floor Framing Details	9/25/2020
SD-30	Roof Framing Details	9/25/2020
SD-31	Roof Framing Details	9/25/2020
SD-40	Shearwall Details	9/25/2020

MEP Drawings - Permit Issue prepared by HGE CONSULTING, INC.

M001	Mechanical Plans	9/25/2020
M002	Energy Compliance	9/25/2020
M003	Mechanical Details	9/25/2020
M100	Mechanical: Site Plans - Parking Level	9/25/2020
M101	Mechanical: Site Plan - Upper Levels	9/25/2020
M200	Mechanical Unit Plans: Unit A1a, A1b & A2b	9/25/2020
M201	Mechanical Unit Plans: Unit A3a H.C., B1c, B2b, B3a H.C., & C1d	9/25/2020
M202	Mechanical Unit Plans: Unit C2a & C3a H.C.	9/25/2020
M300	Mechanical Club - First Floor Plan	9/25/2020
M301	Mechanical Club - Second Floor Plan	9/25/2020
M302	Mechanical Club - Maint., Mech Elev. Rm., Fire Pump Room, & Elev Eq. Room	9/25/2020
M303	Mechanical - Grille House, Pool Equip., Laundry Roof Second & Fourth Floors, Trash Rooms (Typ. For all Floors)	9/25/2020
M400	Mechanical Building Plans: Second Floor Plan - Domestic Water Storm & Sanitary Sewer	9/25/2020
M401	Mechanical Building Plans: Second Floor Plan - Domestic Water Storm & Sanitary Sewer	9/25/2020
M402	Mechanical Building Plans: Second Floor Plan - Domestic Water Storm & Sanitary Sewer	9/25/2020
M403	Mechanical Building Plans: Second Floor Plan - Domestic Water Storm & Sanitary Sewer	9/25/2020
E001	Electrical Plans	9/25/2020
E002	Energy Compliance	9/25/2020
E003	Electrical Details	9/25/2020
E100	Electrical: Site Plan	9/25/2020
E101	Electrical: Site Plan	9/25/2020
E200	Electrical Unit Plans: Unit A1a, A1b & A2b	9/25/2020
E201	Electrical Unit Plans: Unit A3a H.C., B1c, B2b, B3a H.C., & C1d	9/25/2020
E202	Electrical Unit Plans: Unit C2a & C3a H.C.	9/25/2020
E300	Electrical Club - First Floor Plan - Lighting	9/25/2020
E301	Electrical Club - First Floor Plan - Power	9/25/2020
E302	Electrical Club - Second Floor Plan - Lighting	9/25/2020
E303	Electrical Club - Second Floor Plan - Power	9/25/2020
E304	Electrical Club - Maint., Mech Elev. Rm., Fire Pump Room, & Elev Eq. Room - Lighting	9/25/2020
E305	Electrical Club - Maint., Mech Elev. Rm., Fire Pump Room, & Elev Eq. Room - Lighting	9/25/2020
E306	Electrical - Grille House, Pool Equip., Laundry Roof Second & Fourth Floors, Trash Rooms (Typ. For all Floors) - Lighting	9/25/2020
E307	Electrical - Grille House, Pool Equip., Laundry Roof Second & Fourth Floors, Trash Rooms (Typ. For all Floors) - Power	9/25/2020
E400	Electrical Building Plans: Notes	9/25/2020
E401	Electrical Building Plans: First Floor Plan	9/25/2020
E402	Electrical Building Plans: First Floor Plan	9/25/2020
E403	Electrical Building Plans: First Floor Plan	9/25/2020
E404	Electrical Building Plans: First Floor Plan	9/25/2020
E405	Electrical Building Plans: Second Floor Plan	9/25/2020
E406	Electrical Building Plans: Second Floor Plan	9/25/2020
E407	Electrical Building Plans: Second Floor Plan	9/25/2020
E408	Electrical Building Plans: Second Floor Plan	9/25/2020
E409	Electrical Building Plans: Third Floor Plan	9/25/2020
E410	Electrical Building Plans: Third Floor Plan	9/25/2020

E411	Electrical Building Plans: Third Floor Plan	9/25/2020
E412	Electrical Building Plans: Third Floor Plan	9/25/2020
E413	Electrical Building Plans: Fourth Floor Plan	9/25/2020
E414	Electrical Building Plans: Fourth Floor Plan	9/25/2020
E415	Electrical Building Plans: Fourth Floor Plan	9/25/2020
E416	Electrical Building Plans: Fourth Floor Plan	9/25/2020
E417	Electrical Building Plans: Roof Plan	9/25/2020
E418	Electrical Building Plans: Roof Plan	9/25/2020
E419	Electrical Building Plans: Roof Plan	9/25/2020
E420	Electrical Building Plans: Roof Plan	9/25/2020
E500	Electrical Calculations	9/25/2020
E501	Electrical Calculations	9/25/2020
E502	Electrical Calculations	9/25/2020
E503	Electrical Calculations	9/25/2020
E504	Electrical Calculations	9/25/2020
P001	Plumbing Plans	9/25/2020
P002	Energy Compliance	9/25/2020
P003	Plumbing Details	9/25/2020
P100	Plumbing Site Plan: Parking Level	9/25/2020
P101	Plumbing Site Plan: Upper Levels	9/25/2020
P200	Plumbing Unit Plans: Unit A1a, A1b & A2b	9/25/2020
P201	Plumbing Unit Plans: Unit A3a H.C., B1c, B2b, B3a H.C., & C1d	9/25/2020
P202	Plumbing Unit Plans: Unit C2a & C3a H.C.	9/25/2020
P300	Plumbing Club: First Floor Plan	9/25/2020
P301	Plumbing Club: First Floor Plan	9/25/2020
P302	Plumbing Club: Maint., Mech Elev. Rm., Fire Pump Room, & Elev Eq. Room	9/25/2020
P303	Electrical - Grille House, Pool Equip., Laundry Roof Second & Fourth Floors, Trash Rooms (Typ. For all Floors)	9/25/2020
P400	Plumbing Building Plans: Notes	9/25/2020
P401	Plumbing Building Plans: First Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P402	Plumbing Building Plans: First Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P403	Plumbing Building Plans: First Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P404	Plumbing Building Plans: First Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P405	Plumbing Building Plans: Second Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P406	Plumbing Building Plans: Second Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P407	Plumbing Building Plans: Second Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P408	Plumbing Building Plans: Second Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P409	Plumbing Building Plans: Third Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P410	Plumbing Building Plans: Third Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P411	Plumbing Building Plans: Third Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P412	Plumbing Building Plans: Third Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P413	Plumbing Building Plans: Fourth Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P414	Plumbing Building Plans: Fourth Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P415	Plumbing Building Plans: Fourth Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P416	Plumbing Building Plans: Fourth Floor Plan - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P417	Plumbing Building Plans: Roof - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P418	Plumbing Building Plans: Roof - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P419	Plumbing Building Plans: Roof - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P420	Plumbing Building Plans: Roof - Domestic Water, Storm & Sanitary Sewer	9/25/2020
P500	Plumbing Risers - Sanitary Sewer	9/25/2020
P501	Plumbing Risers - Sanitary Sewer	9/25/2020
P502	Plumbing Risers - Domestic Water & Gas	9/25/2020
Fire Protection Drawings - Permit Issue prepared by AMERICAN FIRE SYSTEMS, INC.		
FP1.0	Site Plan	9/29/2020
FP1.1	General Notes & Details	9/29/2020
FP1.2	Pump Room	9/29/2020
FP1.3	Stair Section	9/29/2020
FP1.4	Stair Section	9/29/2020
FP1.5	First Floor	9/29/2020
FP1.6	Second Floor	9/29/2020
FP1.7	Third & Fourth Floor	9/29/2020
FP1.8	Isometric & Calculations	9/29/2020
Landscape Drawings prepared by GREENSCAPE ASSOCIATES		
L101	Landscape Plan	9/25/2020
L102	Landscape Plan	9/25/2020

EXHIBIT "I"
COMPLETION SCHEDULE
CANAL LOFTS

<u>Building Number</u>		<u>Days from Commencement</u>	<u># of Units</u>	
			per Bldg	Total
Building 6	Garage	424	0	0
Building 7 / 8	Amenity / Pool	438	0	0
Building 1		468	30	30
Building 2		498	24	54
Building 3		526	30	84
Building 4		551	33	117
Building 5		576	33	150
			150	

EXHIBIT J

CANAL LOFTS

Qualifications

GENERAL REQUIREMENTS

1. Contractor shall provide Workmen's Compensation, General Liability Insurance, and Builders Risk Insurance.
2. Performance and Payment bonds are included.
3. The contractor and/or the subcontractor shall provide and pay for all licenses where required for work under this contract.
4. PROGRESS CLEANUP
 - a. TRASH REMOVAL: Clear site of trash at least once per week. If rapid accumulation, more frequent removal. Contain or remove combustible trash and garbage daily.
 - b. FINAL CLEANING: (By General Contractor) Project to be handed over in clean and tidy condition inside and out. Remove smudge, marks, stains, fingerprints, soil, dirt, paint spots, dust, lint, discoloration, and other contamination. Clean the finished surfaces inside and outside the buildings. Use only cleaning materials recommended by the manufacturer of the surface to be cleaned. Replace air conditioning filters if air conditioning units were operated during construction. Clean ducts, blowers, and coils if units were operated without filters during construction. Leave units ready for occupancy inside. Power wash all first floors building corridors, exterior sidewalks, and paving.
5. Contractor shall conform to all requirements governing safety on the job including but not limited to OSHA requirements.
6. Contractor shall provide supervision required to coordinate all phases of construction.

SITE WORK

1. Contractor shall furnish all construction surveying and staking based on boundaries being provided by the developer.
2. The site preparation is based on scarifying and removing all vegetation. This estimate is based on a balanced site utilizing onsite fill. Building pads will have 6 feet of moisture conditioning of existing soil. The upper 6 inches of moisture conditioned soil will be lime stabilized and then 1 foot of select fill will be placed under building pads. All onsite fill will be placed in 8" (before compaction) lifts. A Proctor Test will be performed on the fill material, so that compaction tests can be made at each lift. Paving areas will be lime stabilized.
3. FOUNDATION MAINTENANCE NOTES:
 - a. Trees and shrubs located next to a foundation are considered to be potential contributing factors to foundation distress. It is recommended that trees not be planted closer than half the canopy diameter of the mature tree, typically 20 feet from foundations.
 - b. Positive drainage away from the foundation should be provided to promote the rapid runoff of surface water. Topsoil and sand detain water because they are permeable and do not provide positive drainage.

- c. It is the Owners responsibility to conduct a yearly inspection of the foundation and flatwork and do any maintenance necessary to ensure drainage to minimize the infiltration of water from rain and lawn watering.
- 4. Landscaping – **\$187,500 allowance**
- 5. Irrigation System – design-build with all PVC components and Rain Bird, Hunter, or equal, valves, spray heads, and rotor heads.
- 6. Utilities: Furnish and install material, equipment, and labor to complete work.
- 7. Storm Sewer, Wastewater, and Water included. All offsite work is excluded.
- 8. Underground stormwater detention.

CONCRETE

- 1. Foundation
 - a. Cast in place podium foundation per typical design.
 - b. Post-Tension slab on grade will consist of 3000 PSI (performance mix with fly ash) placed on a 10-mil vapor barrier.
 - i. Termite Treatment – Soil treatment below slab-on-grade for subterranean insects and soil treatment at backfill at exterior building perimeter for subterranean insects. A one (1) year warranty will be provided.
 - ii. Reinforcement - all rebar and post-tension cables shall be graded per the engineered drawings. All reinforcement will be properly supported, mats to be supported on chairs, to ensure that the specified concrete coverage is maintained.
 - iii. Accessories - The 10-mil polyethylene vapor barrier will be inspected before pouring. All seams and tears will be repaired and placement will be inspected to ensure that the bottom of the beams will bear on the soil.
- 2. Paving – Drives, parking, and dumpster areas will consist of 3000 PSI (performance mix) Ready-mix placed on compacted subgrade. The drives will be 6" thick, the parking areas will be 5" thick and the dumpsters will be 7" thick. The paving will be reinforced with #3 rebar at eighteen (18") inches on center, each way. Driveways will be striped as indicated on the plans.
- 3. All offsite work is excluded.
- 4. Sidewalks - Four (4") inches of 3000 PSI (performance mix) placed on the subgrade. The sidewalk will be reinforced with #3 rebar at eighteen (18") inches OCEW.
- 5. Gypsum – Application, at level 2 and level 3 unit floor areas only, average ¾" Gypsum underlayment over 1/8" sound mat at hard surface areas and ¾" Gypsum underlayment at carpet areas.
- 6. Hardrock – Two and one half (2 – 2 ½") inches of Pea Gravel concrete (7 sack mix design) on sloped breezeways.

MASONRY

- 1. Brick allowance is **\$390** per 1000 brick.
 - a. Exterior Veneer – brick and split-faced CMU
 - b. Split faced CMU compactor enclosure.
 - c. Monument sign
 - d. Fence columns
 - e. Interior stone at the club
 - f. CMU elevator shafts
 - g. 3-hour CMU wall separating Amenity Center from Parking Garage.

2. Ceramic tile at the following locations:
 - a. Unit tub/shower surround - Daltile Affinity, AF03, 12x24, OR EQUAL
 - b. Unit kitchen backsplash. \$1.50 material allowance.
 - c. Unit bath floors - Daltile Affinity, AF03, 12x24, OR EQUAL
 - d. Club restroom walls and kitchen backsplash - Tile allowance \$3/sf on all
 - e. Pavers – Pool Deck and Roof Terrace - Pavestone Holland Stone, or equal, 6cm thick pavers in standard grey cement colors and finish over 1" sand bed.

METAL

1. Iron railing at balconies, patios, and landings to be 42" high with 1 1/2" square tubing on top & bottom and 1/2" square tubing pickets on 4" centers. Iron shop primed and field painted.
2. Steel staircase tower to consist of stairs totaling three (3) stories. Wall rail, inside wall rail, and cane detection rail included at each staircase tower. Stair stringers to be 10X8.4MC channel, 3X2X3/16x0'8" tread angles, and 3X12X41" pre-cast brush finished treads. Iron shop primed and field painted.
3. Perimeter Fence and Metal Enclosures
 - a. Cement fiber siding wood perimeter fence (6') and metal perimeter fence (6') per plans.
 - b. Pool Fence – 4' 7" high with 3/4" pickets on 4" centers, 1 1/2" sq. top and bottom rails.
 - c. Driveway gates - 6' high with 2" square tubing on top and bottom, 3/4" square tubing pickets on 6" centers, and 2" square tubing posts on 8' centers.
4. Structural Steel per plans.

CARPENTRY

1. Framing
 - a. Labor - All work shall be done per the codes recognized by the governing Municipality.
 - b. Material - all material will be graded and grade marked.
 - c. Floor framing - trusses and beams designed by a registered engineer sized according to the spans and associated loads.
 - d. Roof framing - premanufactured wood trusses.
 - e. Fasteners - The contractor shall supply all bolts, screws, joist hangers, etc. required to install the specified material. Sizing will be done following the manufacturer's recommendations and governing codes. All fasteners used to install exterior material shall be galvanized or coated.
2. Interior Trim and Millwork
 - a. Millwork - Material shall be provided by BMC, or equal. MDF base, window casing, and door casing included in units.
 - b. Shelving and Rods – MDF shelves per plans.
3. Granite countertops – 2cm level 1
 - a. Units – kitchens and baths
 - b. club
4. Cabinets – Master Wood Craft or equal cabinets with Shaker panel doors and 6" bar pull hardware. Standard stain colors. Standard cabinet boxes, dead/blind corners. Corner cabinets are excluded.
5. Exterior Veneer & Cornice – In addition to brick, Contractor will furnish and install a complete synthetic wood system composed of fiber-cement lap siding, and fiber-cement 1x trim to cover and trim around the remaining exterior.

THERMAL & MOISTURE PROTECTION

1. Roof – 80 mil felt backed TPO. Standing seam metal roof at grill house and awnings.
2. Moisture Barrier - FortiFiber building wrap or equal. Installed per manufacturer's standards.
3. Insulation:
 - a. R-38 blown insulation batts in attic.
 - b. R-15 unfaced batts in exterior walls.
 - c. R-11 unfaced batts in party wall – both sides.
 - d. R-11 unfaced batts at unit mid-floors.
 - e. Expandable foam around exterior walls, windows, and doors. Install baffles at vents to ensure airflow.
4. Rain Gutters – 5” continuous, pre-painted aluminum gutter and 3x4 downspouts.

GLASS & GLAZING

1. Vinyl Windows - by Trophy, Ply Gem or equal; with double-pane, Low-E glass. Standard frame colors.
2. Window Opening Control Devices are excluded
3. Storefront – 2” x 4 ½” system. 1” exterior glass. ¾” interior glass.
4. Glass railing at cardio balcony only
5. Mirrors - All bathroom walls shall receive framed mirrors.

FINISHES

1. Paint:
 - a. Exterior – Plaster and Fiber-cement siding will be prepared for one coat of (flat) acrylic-latex house paint (or equal)
 - b. Interior - We have allowed for one ceiling and wall color, and one trim color. Walls and ceilings will receive one coat of flat Acrylic-latex (or equal) except kitchen, utilities, and baths which will be semi-gloss.
2. Drywall - All walls and ceilings, including the corridor ceilings, will be spray splatter textured.
3. Wood trim and doors - All trim will be prepared before receiving two coats of semi-gloss enamel (or equal).

SPECIALTIES

1. Finish Hardware – Faultless Olympic, or equal, lever with a stainless steel finish.
2. Bath Accessories – Includes chrome toilet paper holders, towel bars, and curved shower rods.
3. Fire extinguishers – 2.5 lb. ABC fire extinguishers in units. Clubhouse fire extinguishers per plan.
4. Mailboxes per plan.
5. Two trash chutes per plans.
6. Graphics & Building Signs - **\$49,921 allowance**

APPLIANCES

1. Appliances – **\$447,709 allowance**, stainless steel.
2. 5 - Gas grills are included.

FURNISHINGS

1. Vinyl plank floor throughout units.
2. CORRIDORS – no flooring
3. Club
 - a. Vinyl plank \$2.00 SF allowance
 - b. Carpet tile \$35 SY allowance
4. Window coverings:
 - a. Clubhouse – excluded.
 - b. Units – 2" faux wood

SPECIAL CONSTRUCTION

1. Pool and Deck - **\$194,811 allowance**
2. 5 - pool sunshades

ELEVATORS

1. Two 3500 lb. elevators per plans.

MECHANICAL

1. Plumbing - All plumbing will be installed per the codes of the governing Municipality and the drawings and specifications. Water pipe to be PVC, CPVC, and Schedule 40 sewer pipe. Chrome faucets.
2. Fire sprinkler System – NFPA 13R system (no coverage between floors and in attics) in residential units. NFPA 13 in the clubhouse only.
3. HVAC - All systems will be designed so that they meet or exceed the governing Municipality's codes and the following design criteria.
 - a. Goodman or Comfort Maker 14 Seer R-410A condensing units and Goodman or Comfort Maker Air handlers or equal per each unit
 - b. Supply Duct – R-6 ductwork
 - c. Thermostat – 5-2 Programmable
 - d. Registers - Plastic

ELECTRICAL

1. All work will be completed to meet or exceed the National Electrical Code and the codes recognized by the governing Municipality. Service to the apartments will be provided underground by the local utility company. Everything is assumed to be electrically powered. All switches will be the rocker type and the outlets will be standard devices.
2. Electric Fixtures - **\$182,855 allowance.**
3. Fire alarm system.
4. Security System only in the clubhouse, not in units.
5. Vehicle access control - controlled by commercial-grade Elite slide gate operators or equal. A complete hardware system and software system will be delivered to the owner for everyday access and emergencies.

EXCLUSIONS

1. Assessment, Impact, and Tap Fees
2. Building Permits
3. Utility (Water, Gas, and Electric) Meters and any associated fees
4. Wallpaper
5. Commercial Washers & Dryers
6. Form Survey, Slab Survey & As-Built Survey
7. Material testing and inspections
8. Import and export of fill dirt.
9. All offsite work.
10. All demolition work.
11. Structural steel.
12. Domestic water booster pump.
13. Trash compactor
14. KAI ID plans and selections (Received late and will price to add)
15. Glass railing other than at cardio balcony
16. Owner furnished equipment like fitness equipment, playground equipment, TV's, stereos, camera system, amenity access system, audio/video equipment, furniture, pool furniture, etc.

EXHIBIT K

NOTICE TO PROCEED

NH CANAL LP
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, TX 77043

Date:

Mr. Jarvis Taylor, Executive Director
Education Based Housing, Inc.
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, TX 77043

Re: Canal Lofts

Dear Jarvis,

Pursuant to Section 3.1 of the A101 Agreement, this letter constitutes the Owner's written notice to proceed with the commencement of construction of the above referenced Project, as of the Date of Commencement established herein.

By your signature below, the parties hereby agree and acknowledge that the Date of Commencement under the Contract Documents shall be the ____ day of _____, 20__.

Very truly yours,

NH CANAL LP, a Texas limited partnership

By: NH CANAL GP LLC, a Texas limited liability company, its general partner

By: _____
H. Chris Richardson, Manager

Accepted and Acknowledged:

Education Based Housing, Inc.

By: _____
Jarvis Taylor, Executive Director

EXHIBIT L
CERTIFICATE OF INSURANCE

EXHIBIT "M"

Internal Revenue Service
Director, EO Rulings & Agreements
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: November 22, 2004

Employer Identification Number:
76-0629574

Document Locator Number:
17053-318-75504-4

Toll Free Number: 877-829-5500

FAX Number: 513-263-3756

EDUCATION BASED HOUSING INC
6363 WOODWAY STE 320
HOUSTON, TX 77057

NOV 29 2004

Acknowledgement of Your Request

We received your Form 8734, Support Schedule for Your Advance Ruling, or other information regarding your public support status. When communicating with us, please refer to the employer identification number and document locator number shown above.

Your tax exempt status under section 501(c)(3) of the Internal Revenue Code remains in effect.

What Happens Next?

The information you submitted was entered into our computer system at our processing center in Covington, Kentucky, and has been sent to our Cincinnati office for initial review. We approve some cases based on this review. If this is the case, you will receive a letter stating that you are a publicly supported organization.

If the review indicates that additional information or changes are necessary, your case will be assigned to an Exempt Organization Specialist in Cincinnati who will call or write you. We assign cases in the order we receive them.

If the additional information indicates that you meet one of the public support tests, you will receive a letter stating that you are a publicly supported organization. If the public support tests are not met, we will send you a letter re-classifying you as a private foundation. That letter will tell you why we believe you do not meet the public support tests, and will include a complete explanation of your appeal rights.

How long will this process take?

Normally, you may expect to hear from us within 120 days. If you do not, you may call our toll free number between the hours of 8 a.m. and 6:30 p.m. Eastern Time. Please have your identification numbers available so that we can identify your case. If you would rather write than call, please include a copy of this notice with your correspondence.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

7002 0 2 030

DEPARTMENT OF THE TREASURY

Date: **DEC 16 2004**

EDUCATION BASED HOUSING INC
6363 WOODWAY STE 320
HOUSTON, TX 77057

Employer Identification Number:
76-0629574
DIN:
17053318755044
Contact Person:
ERIC J BERTELSEN ID# 31323
Contact Telephone Number:
(877) 829-5500
Public Charity Status:
170(b)(1)(A)(vi)

Dear Applicant:

Our letter dated August 2000, stated you would be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, and you would be treated as a public charity, rather than as a private foundation, during an advance ruling period.

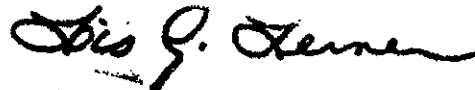
Based on the information you submitted, our letter dated June 21, 2004 in which you were presumed to be a private foundation is hereby superseded. You are classified as a public charity under the Code section listed in the heading of this letter. Since your exempt status was not under consideration, you continue to be classified as an organization exempt from Federal income tax under section 501(c)(3) of the Code.

Publication 557, Tax-Exempt Status for Your Organization, provides detailed information about your rights and responsibilities as an exempt organization. You may request a copy by calling the toll-free number for forms, (800) 829-3676. Information is also available on our Internet Web Site at www.irs.gov.

If you have general questions about exempt organizations, please call our toll-free number shown in the heading between 8:00 a.m. - 6:30 p.m. Eastern time.

Please keep this letter in your permanent records.

Sincerely yours,



Lois G. Lerner
Director, Exempt Organizations
Rulings and Agreements

Letter 1050 (DO/CG)

Feb 10 05 09:57a

Sara Oliva

512-383-9301

P. 1

09/17/2004 10:48 7132420340

PLUMCREEK

PAGE 01

FROM GARDERE, WYNNE, SEWELL & RIGGS



COMPTROLLER OF PUBLIC ACCOUNTS
STATE OF TEXAS
AUSTIN, 78774

August 25, 2000

Ms. Patricia Freytag
Gardere, Wynne, Sewell & Riggs, L.L.P.
1000 Louisiana, Suite 3400
Houston, Texas 77002-5007

Dear Ms. Freytag:

I am pleased to report that Education Based Housing, Inc., Taxpayer No. 1-76-0629574-3 qualifies for exemption from the franchise tax as a 501(c)(3) organization effective December 21, 1999. Since the account is in the process of being updated, you should disregard any franchise tax notices for periods covered by the exemption. In the event we have reason to believe the organization no longer qualifies for exemption, we will notify the registered agent that the exempt status is under review.

This corporation also qualifies for exemption from the state and local sales taxes effective December 21, 1999 as a 501(c)(3) organization. It may now issue an exemption certificate instead of paying the sales tax on taxable items if they relate to the purpose of the exempt organization and are not used for the personal benefit of a private stockholder or individual. The certificate does not require a number to be valid and may be reproduced in any quantity.

If the organization makes any sales of taxable items or services, please contact our Tax Assistance Section at 1-800-552-5555 to determine if a sales tax permit is needed. The regular number is 512/463-4500.

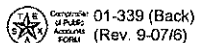
If the organization changes its name, registered agent, or registered office address, it is required to notify the Secretary of State.

If you have any questions or need more information, I will be glad to help you. You may e-mail me at tax.help@cpa.state.tx.us, or you may call me toll free at 1-800-531-5441, extension 1-0252.

Sincerely,

Sharon Paulson
Exempt Organizations Section

EXHIBIT "N"



TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

Name of purchaser, firm or agency Education Based Housing, Inc.	
Address (Street & number, P.O. Box or Route number) 4001 W. Sam Houston Pkwy. N., Suite 100	Phone (Area code and number) 713-914-9200
City, State, ZIP code Houston, TX 77043	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: **Blazer Building Texas, LLC**

Street address: **4001 W. Sam Houston Pkwy. N., Suite 100** City, State, ZIP code: **Houston, TX 77043**

Description of items to be purchased or on the attached order or invoice:

Various construction related materials to be incorporated into a property known as Canal Lofts located at 75601 Canal Street, Houston, Texas 77011.

Purchaser claims this exemption for the following reason:

Blazer Building Texas, LLC is a subcontractor of Education Based Housing, Inc., a 501(c)3 organization for the purpose of developing, building and servicing low-income housing.

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

Purchaser 	Title Jarvis Taylor, Executive Director	Date
---------------	--	------

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.
 THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.
 Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do **not** send the completed certificate to the Comptroller of Public Accounts.

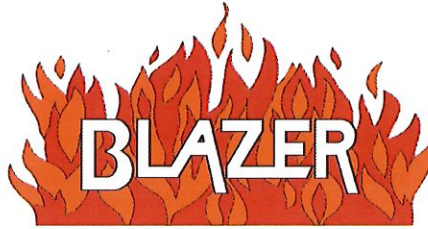


EXHIBIT O

ACCEPTANCE LETTER

DATE:

NH CANAL LP
4001 W. Sam Houston Pkwy. N., Suite 100
Houston, TX 77043

RE: Canal Lofts
Acceptance Letter
Building 1 - Interior

Gentlemen:

By your signature below you are accepting, and your Customer Relations Manager will assume, full possession and responsibility for the above-referenced building interior as of the date and time below.

All warranties for the building commence as of the below noted date. Upon acceptance, you will become responsible for all insurance and maintenance on the entire building. Further, by your signature below, you are acknowledging receipt of the warranty package, including the appliance warranties, hot water heater warranties, keys, aerators, shower heads, sink strainers and sink stoppers.

It is understood and agreed that residents (permanent occupants) will not be moved into dwelling units until the entire Building 1 – Interior has been accepted by you or your designated representative.

Very truly yours,
Blazer Building Texas, LLC

Chad Hillman
Vice President of Construction

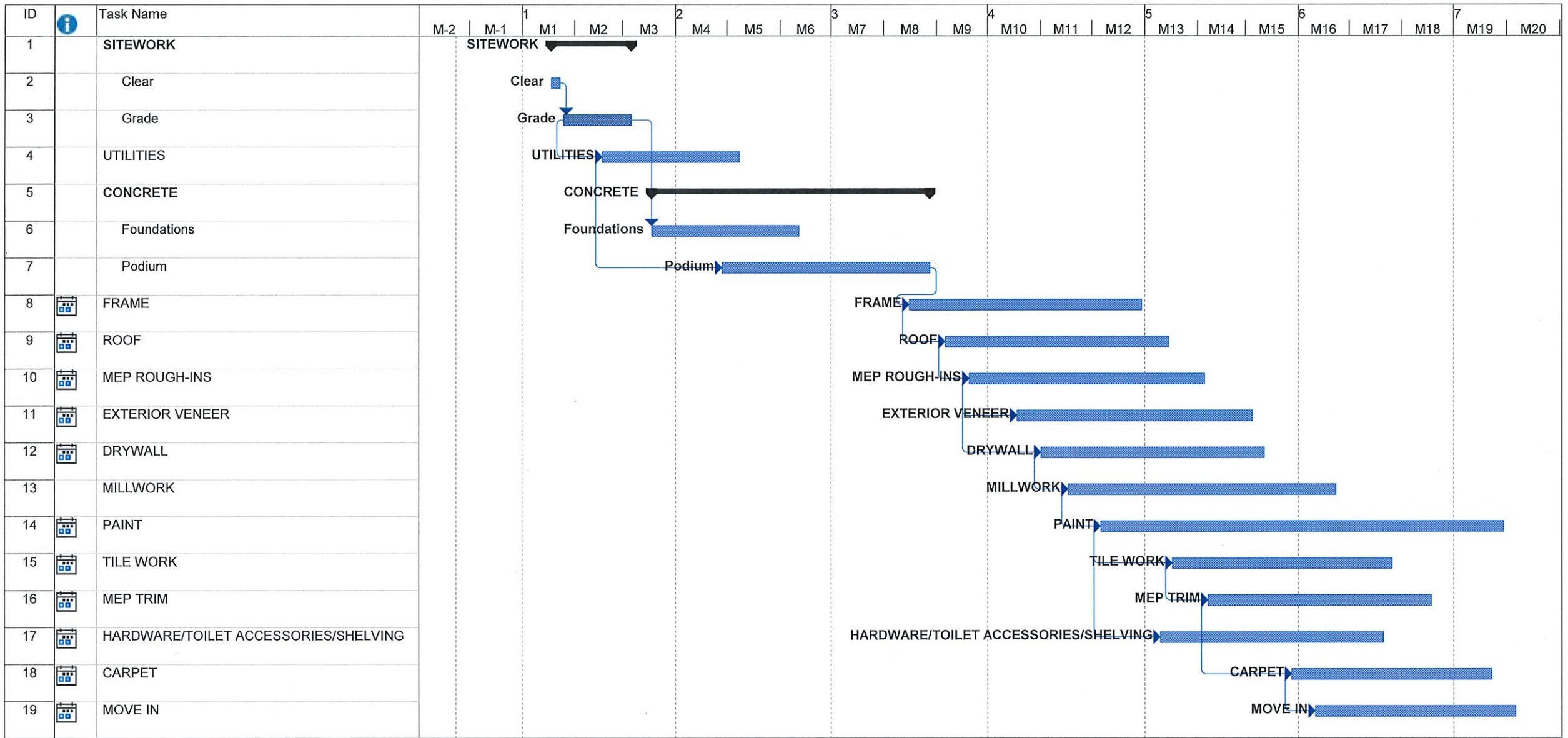
Accepted:

By: _____

Title: _____

Date: _____

Time: _____



Project: Canal Lofts # of Units: 150 Date: Mon 11/23/20	Task		External Tasks		Duration-only		External Tasks		External Milestone
	Split		External Milestone		Manual Summary Rollup		External Milestone		Progress
	Milestone		Inactive Milestone		Manual Summary		Progress		Deadline
	Summary		Inactive Summary		Start-only		Deadline		
	Project Summary		Manual Task		Finish-only				

Authority to Use Grant Funds

U.S. Department of Housing
and Urban Development
Office of Community Planning
and Development

To: (name & address of Grant Recipient & name & title of Chief Executive Officer)

Copy To: (name & address of SubRecipient)

We received your Request for Release of Funds and Certification, form HUD-7015.15 on

Your Request was for HUD/State Identification Number

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.

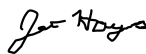
Typed Name of Authorizing Officer

Signature of Authorizing Officer

Date (mm/dd/yyyy)

Title of Authorizing Officer

X



Mitigation Measures and Conditions

[40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Law, Authority, or Factor	Mitigation Measure
Historic Preservation National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800	During project activities, if buried cultural materials are encountered during construction or disturbance activities, work should cease in the immediate area; work can continue where no cultural materials are present. Please contact the THC's Archology Division at 512-463-6096 to consult on further actions that may be necessary to protect the cultural remains. In addition, notify the GLO if cultural resources are found.
Noise Abatement and Control Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B	The project design's building materials have been determined to provide at least 30.7 dB of sound attenuation in order to ensure an interior noise environment of at least 45 dB. With the as-designed plans and materials, the planned development will be in compliance with all noise abatement and control regulations.

Recommended Best Practices

Law, Authority, or Factor	Recommended Best Practice
Soil Suitability	The use of stabilized structural fill may be required due to the presence of unstable soils and previous development on the property. Construction plans should refer to a geotechnical report, if available.
Storm Water Runoff / Erosion	The subject property may be susceptible to soil erosion during demolition and construction activities. Best management practices should be employed to control runoff from construction sites to prevent detrimental impacts to surface and ground water.
Asbestos	<p>A Limited Asbestos Inspection Report was completed by Phase Engineering, Inc. for the subject property dated August 21, 2020. No regulated Asbestos Containing Building Materials (ACBMs) were identified from the survey. If suspect ACBMs (not noted during this inspection) should be found during demolition activities, these materials should be sampled for asbestos and handled appropriately following all local, state and federal rules and regulations at that time.</p> <p>During renovation or demolition activities, care should be exercised in dealing with all construction materials even those shown to be non-asbestos containing (this would include materials technically considered as non-asbestos containing because they are below the one percent limit). If these non-asbestos materials are to be disturbed work practices should be used that will limit exposure to dust and debris. Contractors performing this work should conform to OSHA regulations outlined in 29 CFR 1926.55 (exposure limits can be found in 29 CFR 1910.1000 Table Z-3)</p> <p>A TDSHS Demolition/Renovation Notification form is required before the demolition of a building or facility, even when no asbestos is present. This form must be used to fulfill either of these requirements. Please call either 512-834-6610 or 1-800-572-5548 (within Texas), or your local regional office for assistance in completing this form.</p>

BANK OF AMERICA

Valerie A. Williams
901 Main Street, 20th Floor
Dallas, Texas 75202

(214) 209-3219
Valerie.a.williams@BofA.com

August 28, 2020

NH Canal L.P.
c/o Nathan Kelly
Nantucket Housing, LLC.
4001 West Sam Houston Pkwy N #100
Houston, TX 77043

Re: Construction to Permanent Loan for Canal Lofts, located in Houston, Harris County,
Texas (the "Project")

Dear Nathan:

This Summary of Terms and Conditions (this "Term Sheet") is an outline only and does not purport to summarize all of the conditions, terms, covenants, representations, warranties and other provisions which would be contained in definitive legal documentation for the credit facility contemplated hereby (the "Facility"). This Term Sheet is not a commitment by or an obligation of Bank of America, N.A. ("Bank") or BofA Securities, Inc. ("BofA Securities" and, together with Bank and their respective subsidiaries and affiliates, "Bank of America").

Issuance of a commitment by the Bank is subject to, among other things, the completion of the following items, and approval of the loan request under the Bank's internal approval process. The Bank may decline to approve the loan request. Upon your response to this letter and after providing any additional information which may be necessary, the Bank will proceed with the necessary due diligence to submit the loan request.

This Term Sheet is delivered to you with the understanding that neither the Term Sheet nor any of its terms and substance shall be disclosed, directly or indirectly, to any other person except: (i) to your employees, agents and advisors who are directly involved in the consideration of the Facility; (ii) to subscribing and potential investors and their advisors who agree to keep such materials confidential; and (iii) as disclosure may be compelled in a judicial or administrative proceeding or as otherwise required by law or the Securities and Exchange Commission.

All interest rates and other pricing terms are quoted based on the assumption that the Facility will not be classified as HVCRE (High Volatility Commercial Real Estate Exposure) pursuant to Basel III Regulations. The quoted interest rates and other pricing terms are potentially subject to change if the Facility is anticipated to be classified as HVCRE pursuant to Basel III Regulations.

Any Facility, as contemplated by this Term Sheet, will be subject to applicable flood insurance regulations at all times during the life of such Facility. Compliance with flood insurance regulations will be tested prior to making, increasing, renewing or extending any such Facility.

Bank of America and BofA Securities hereby notify you that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “PATRIOT Act”) and recent regulations implemented by the US Treasury’s Financial Crimes Enforcement Network (“FinCEN”) under 31 C.F.R. § 1010.230 (the “Beneficial Ownership Regulation”), each of them is required to obtain, verify and record information that identifies you, which information includes, but is not limited to, your name and address, a Beneficial Ownership Certification, and other information that will allow Bank of America and BofA Securities to identify you in accordance with the PATRIOT Act and the Beneficial Ownership Regulation prior to closing this Facility. You shall, promptly following a request by Bank of America or BofA Securities, provide all documentation and other information that such party requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act and the Beneficial Ownership Regulation. “Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

The undersigned acknowledges and agrees that: (i) the transaction contemplated by this Term Sheet is an arm’s length, commercial transaction between you and Bank in which Bank is acting solely as a principal and for its own interest; (ii) Bank is not acting as a municipal advisor or financial advisor to you; (iii) Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to you with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Bank has provided other services or is currently providing other services to you on other matters); (iv) the only obligations Bank has to you with respect to the transaction contemplated hereby expressly are set forth in this Term Sheet; and (v) Bank is not recommending that you take an action with respect to the transaction contemplated by this Term Sheet, and before taking any action with respect to the contemplated transaction, you should discuss the information contained herein with its own legal, accounting, tax, financial and other advisors, as it deems appropriate. If you would like a municipal advisor in this transaction that has legal fiduciary duties to you, you are free to engage a municipal advisor to serve in that capacity. This Term Sheet is provided to you pursuant to and in reliance upon the “bank exemption” provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 et seq.

The proposed terms and conditions are as follows:

- Project: To be constructed 150 -unit Family apartment complex (the “Project”) located at 5601 Canal Street, Houston, Harris County, Texas (the “Property”).
- Borrower: NH Canal L.P., a SPE—form and substance of Borrower must be acceptable to the Bank.
- Construction Facility Amount: Information obtained by the Bank is so far insufficient to establish a loan amount. Based on our general underwriting parameters for what we believe to be similar transactions, the construction loan amount in this transaction would be the lesser of:
- a) \$19,358,270; or
 - b) 85% LTC based on final Bank approved construction budget; or
 - c) An amount not to exceed eighty percent (90%) of the Adjusted Loan-to-Value Ratio. For purposes hereof, “Adjusted Loan-to-Value Ratio” means the sum of:

- (1) the appraised value of the land and improvements calculated on a “restricted rent” income approach basis, as determined by Bank in its sole and absolute discretion; plus
- (2) the value of the tax credits, as determined by Bank in its sole and absolute discretion.

d) An amount, which taken together with all available and committed sources of funds for repayment of the Facility, would result in a minimum Debt Service Coverage Ratio for the Project after stabilization of 1.20. “Debt Service” will be defined in the Facility documentation and generally will refer to the aggregate amount of principal and interest payments required to amortize the Facility amount based on a 35-year repayment schedule and an interest rate equal to the greater of (i) 4.00% and (ii) the 10-year U.S. Treasury rate plus 4.00% per annum.* “Debt Service Coverage Ratio” means the ratio obtained by dividing Net Operating Income by Debt Service. “Net Operating Income” will be defined in the Facility documentation based, as of any date, on annualizing revenues generated by the Property for the then most recently ended fiscal quarter and deducting operating expenses for the Property based upon then actual operating expenses, including but not limited to payments for replacement reserves (\$300 per unit), as adjusted by Bank in its reasonable discretion.

*Should the Borrower provide a Perm Loan Forward Rate Locked Commitment, from a third party, the Debt Service Coverage Ratio for the Project after stabilization of 1.20 will be calculated on the Facility amount based on a 35-year repayment schedule and an interest rate as defined in the Commitment.

Assignment &
Participations:

Bank of America reserves the right to syndicate, assign or grant participations or other interests in all or part of the Facility, subject to customary, market-standard approval rights. No lender will be permitted to make assignments in respect of the Facility, except to certain specified categories of entities pursuant to customary, market-standard provisions. Specific provisions regarding assignment and participation will be included in the Facility documentation.

Construction
Interest Rate:

Interest will be calculated on the basis of a 360-day year and actual days elapsed, which results in more interest than if a 365-day year were used. The construction loan will bear interest at a fluctuating rate of interest equal to the LIBOR Daily Floating Rate plus 2.50% per annum (the “Note Rate”). “LIBOR Daily Floating Rate” means, for any day, a fluctuating rate of interest per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other person that takes over the administration of such rate) for U.S. Dollars for a period of one (1) month (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by Bank from time to time), at approximately 11:00 a.m., London time, two (2) London Banking Days prior to such day, for U.S. Dollar deposits with a term of one (1) month commencing that day; provided that if the LIBOR Daily Floating Rate shall be less than one percent (1.00%), such rate shall be deemed to equal one percent (1.00%). If the LIBOR

Daily Floating Rate becomes unavailable, indeterminable or illegal, or fails to reflect Bank's costs, the interest rate will be the Base Rate plus 300 bps per annum. "Base Rate" means, on any day, a fluctuating rate per annum equal to the higher of: (i) the Federal Funds Rate for that day plus ½ of 1%, and (ii) the rate of interest in effect for such day as publicly announced from time to time by Bank as its "Prime Rate." The LIBOR Daily Floating Rate and construction loan Note Rate will be further defined in the Loan Documents. The construction loan Note Rate if determined today would be 3.65% (includes the 1% LIBOR Floor). THIS RATE IS INDICATIVE ONLY AND THE ACTUAL CONSTRUCTION LOAN NOTE RATE MAY DIFFER.

If Bank determines, or Borrower notifies Bank that: (a) adequate and reasonable means do not exist for ascertaining LIBOR and such circumstances are unlikely to be temporary, or (b) the administrator of LIBOR or a governmental authority having jurisdiction over Bank has made a public statement identifying a specific date after which LIBOR shall no longer be made available, or used for determining the interest rate of loans provided that, at the time of such statement, there is no successor administrator that is satisfactory to Bank, that will continue to provide LIBOR after such specific date, or (c) bilateral portfolio commercial real property loans are being executed or amended to incorporate or adopt a new benchmark interest rate to replace LIBOR, then Bank and Borrower may enter into an amendment to replace LIBOR (a "LIBOR Amendment") with (x) one or more SOFR-Based Rates or (y) another alternate benchmark rate, giving due consideration to any evolving or then existing convention, and, in each case, including any mathematical or other adjustments, (any such proposed rate, a "LIBOR Successor Rate") to such benchmark giving due consideration to any evolving or then existing convention. In no event shall the LIBOR Successor Rate be less than one percent (1.00%).

"Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York for the purpose of recommending a benchmark rate to replace LIBOR in loan agreements similar to the loan agreement.

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source) and, in each case, that has been selected or recommended by the Relevant Governmental Body.

"SOFR-Based Rate" means SOFR or Term SOFR.

"Term SOFR" means the forward-looking term rate for any period that is approximately one month in duration (as determined by Bank) and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by Bank from time to time in its reasonable discretion.

An interest rate protection product from a financial provider acceptable to the Bank may be required prior to funding of a loan. Borrower and any person or entity that

at any time provides a guaranty of Borrower's obligations in respect of such interest rate protection (including but not limited to any general partner of any thereof) will be required to be an "eligible contract participant" as such term is defined in the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

Construction
Facility Term:

30 months from the loan closing.

Take Out Financing:

Assumed to be a Third Party Forward Take-Out. Perm lender's forward commitment term must match or exceed term of the construction loan. Take-out commitment conditions must be acceptable to the Bank, and may include a requirement for interest rate protection. Borrower and any person or entity that at any time provides a guaranty of Borrower's obligations in respect of such interest rate protection (including but not limited to any general partner of any thereof) will be required to be an "eligible contract participant" as such term is defined in the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

Amortization:

Interest only for 30 months.

The Facility will begin to amortize on month 31 on a monthly basis, with principal installments based on a 35-year repayment schedule and an interest rate equal to the greater of (i) 4.00% and (ii) the 10-year U.S. Treasury rate plus 4.00% per annum. However, if a third party Perm Loan Forward Rate lock Commitment is provided, the amortization will be calculated on the Facility amount based on a 35-year repayment schedule and an interest rate as defined in the Commitment.

Commitment Fee:

50 BPS of the total facility commitment, payable at closing.

Renewal Options:

One, six-month extension option subject to the following, among other things:

- a) No less than 60 but no more than 120 day written notice of intention to exercise the option;
- b) No event of default having occurred or potential default occurring;
- c) Performance hurdles have been met, including but not limited to, lien-free construction completion and lease up hurdles;
- d) The loan is in balance, including sufficient interest reserve;
- e) Project must demonstrate the ability to be able to convert/payoff Bank's loan within the 6-month extension period;
- f) All co-construction loans mature or are extended concurrent or past the Bank's extension date;
- g) All takeout commitments expire or are extended concurrent or past the Bank's extension date;
- h) All investor commitments include terms or are modified to be consistent with the extension of the Bank's loan;
- i) No material adverse change in the financial condition of the Project, Borrower, and Guarantor;
- j) Payment of 0.25% renewal fee based on the committed Facility amount; and
- k) Rate adjustment or fee payment, as appropriate, to cover the cost of revising the forward rate lock, if any.

Payment and
Performance
Guaranty:

100 % guarantee of completion, performance and repayment to be provided by **Blazer-Nantucket Holdings, LLC**. Completion Guaranty will be provided by **Blazer Building Texas LLC** ("Guarantor"). For borrowers that are single-asset entities, principal(s) with general liability or guarantor(s) acceptable to the Bank must be jointly and severally liable for completion of the Project and repayment of the financing, including interest and costs. Guarantors to have financial covenants including but not limited to minimum of \$2,500,000 in Liquidity and Net Worth of \$5,000,000, on a consolidated basis.

Collateral:

Collateral for the Facility will include, without limitation, a first priority (a) mortgage/deed of trust lien on Borrower's fee [leasehold] interest in the Property; (b) assignment of all leases, rents, income, licenses, permits and contracts relating to each Property; (c) lien on all personal property owned by Borrower [if Borrower is not an SPE: (c) lien on all personal property relating to each Property]; (d) lien on all operating reserve and other deposit accounts related to the Property; (e) assignment of all interest rate hedge agreements (if any), and (f) assignment of partnership interest, including capital contributions and tax credits.

General Contractor:

Education Based Housing, Inc. will be the General Contractor with Blazer Building Texas LLC as the Master Sub-Contractor. Entity subject to Bank's full due diligence and approval. Guaranteed maximum price contract required. Contract must require 10% retainage or . Payment and performance bond is required by the City of Houston.

Construction Loan
Closing:

The construction loan closing cannot occur prior to February 1, 2021.

Indemnification and
Expenses

Borrower will pay all costs incurred in connection with the proposed Facility, including but not limited to reasonable legal fees of Bank's counsel, title/insurance fees, mortgage recording fees, and Bank's reasonable appraisal, engineering, insurance review fees, environmental, front end costs and document review/inspections, and physical needs assessment (for existing projects only). In the event that the proposed Facility does not close, the undersigned will pay all such costs. Borrower and the undersigned acknowledge that Bank may receive a benefit, including, without limitation, a discount, credit or other accommodation, from such counsel based on the fees such counsel may receive on account of their relationship with Bank including, without limitation, fees paid in connection with the Facility. Payment by [Borrower][the undersigned] of these expenses will not be contingent upon closing of the Facility.

Borrower, or, in the event that the proposed Facility does not close, the undersigned, will indemnify and hold harmless Bank and its affiliates and their respective partners, directors, officers, employees, agents and advisors from and against all losses, claims, damages, liabilities and expenses arising out of or relating to the Facility, any other aspect of the contemplated transactions, Borrower's use of Facility proceeds or the commitments, including, but not limited

to, reasonable attorneys' fees (including the allocated cost of internal counsel) and settlement costs and any claim for loan brokerage fees or similar payments.

Reporting
Requirements:

Annually: Borrower and Guarantors' financial statements and covenant compliance.

Semi-Annually: Guarantors' financial statements and covenant compliance.

Monthly: Property operating statements and rental summary report.

Principal Depository:

Borrower shall maintain Bank of America, N.A. as its principal depository bank, including for the maintenance of business, cash management, operating and administrative deposit accounts.

Developer Fee
Payment:

Up to \$100,000 at closing and \$100,000 at completion.

Other
Requirements:

Conditions to closing of the Facility will include (all of the items to be delivered to be in form and substance satisfactory to Bank), but shall not be limited to:

- receipt of all due diligence materials necessary and relevant to identifying Borrower's identity and background information, as deemed necessary by Bank;
- completion of all due diligence, including reputational due diligence, with respect to Borrower, Guarantors and their respective subsidiaries and each Property in scope and determination satisfactory to Bank, including but not limited to, documentation and other information requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the PATRIOT Act and the Beneficial Owner Regulation;
- any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver a Beneficial Ownership Certification in relation to such Borrower to Bank;
- receipt of an appraisal for the Property;
- receipt of a Phase I Environmental Site Assessment for the Property;
- receipt of standard flood hazard determination forms for the Property;
- receipt of physical needs assessment for the Property;
- review and acceptance by Bank (and any third party consultant, if any, selected by Bank) of all insurance policies for Borrower and the Property, including, but not limited to, such evidence of flood insurance coverage (including contents coverage, as applicable) as Bank shall require;
- receipt of a plan and cost review report [FOR RENOVATION OF EXISTING BUILDINGS—and a property condition report] for the Property;] (includes adequate contingency, interest carry/operating deficit reserve, condition of markets/submarkets, revenue/expenses pro-formas, etc.);
- receipt of proposed standard form of lease;
- receipt of evidence that the [current and] anticipated use of the Property and that all [existing and] proposed improvements thereto comply with applicable zoning ordinances, regulations and restrictive covenants;

- review and acceptance of plans and specifications for construction of the Property;
 - receipt of a Project budget;
 - [receipt of the Permanent Loan Commitment and Tri-Party Agreement with the Permanent Lender (as such terms are to be defined in the Facility documentation)];
 - receipt of a title insurance policy insuring Bank's first mortgage position on each Property, together with such co-insurance and/or reinsurance as Bank may require, together with UCC, litigation and other searches against Borrower, Guarantor and such other parties as Bank shall require, and such lien waivers from existing contractors as Bank or the title company shall require;
 - receipt of acceptable surveys for each Property;
 - financial review of Borrower, Guarantor, and general contractor;
 - receipt of management agreement and subordination;
 - receipt of proof of tax credit award, equity investor and pay-in schedule, information regarding real estate taxes (including proof of any tax-exempt status if applicable);
 - receipt of satisfactory legal opinions, financial statements, certificates, documents and other instruments as are customary or otherwise appropriate for transactions of this type
 - receipt of such other documents, instruments, agreements or information as reasonably requested by Bank
- and

CashPro Credit: If the Facility is eligible, Borrower agrees to utilize CashPro Credit, a complimentary service provided by Bank. CashPro Credit provides quick and flexible access to credit balances and invoices. Services include:

- View real-time credit line/loan information;
- Ability to search for an invoice and review details;
- Download up to 180 days of transaction history for obligations;
- Initiate payment, advance and non-financial transactions for eligible loans;

and

- Upload financial statements and covenant compliance reporting.

Credit Verification: Each legal entity and individual signing this term sheet hereby authorizes Bank to order credit reports, court searches, verification of deposits, and verification of mortgages on Borrower and Borrower's owners or principals, including any to-be-formed entity or entities. Each individual signing below further authorizes Bank to check any credit references, verify his/her employment and obtain credit reports from credit reporting agencies of Bank's choice in connection with the Facility.¹

Material Adverse Change: Bank of America's obligations hereunder shall terminate if, prior to closing, Bank of America determines, in its sole judgment, that there shall exist any conditions regarding the Property, or the operations, business, assets, liabilities or condition (financial or otherwise, including credit rating) of Borrower or Guarantor, or there shall have occurred a material adverse change in, or there shall exist any material adverse conditions in, the market for syndicated bank credit facilities or the financial, banking, credit or debt capital markets generally, that could be expected

¹ Individual sponsors and guarantors should sign this term sheet in order to authorize Bank to order credit reports. This is a regulatory requirement under some states' laws.

to cause the loan to become delinquent or prevent any guarantor from performing its obligations under any guaranty or to materially and adversely affect the value or marketability of the loan or the Property or Bank of America's ability to syndicate the loan or the viability of obtaining permanent financing for the Project.

Assumptions made: The terms discussed herein are presented, based on the credit conditions in the potential transaction as known by Bank of America. Should additional facts come to light that positively or negatively impact the situation, prices or other requirements quoted here may be adjusted.

Tax Credits: For the purposed of this Term Sheet, it is assumed that Bank of America will be the tax credit investor.

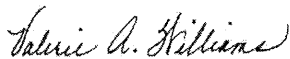
If these items are consistent with your financing requirements, please acknowledge below and return this letter to the signer below within five (5) business days along with a check in the amount of \$15,000 to be used toward Bank of America's legal fees and other related out-of-pocket costs incurred in connection with our formal underwriting and approval process of the Facility. Borrower understands that possible additional funds will be necessary to pay for costs. Conversely, any excess funds will be refunded to Borrower. Bank of America will then be able to proceed with a full review and analysis of your financing request and attempt to obtain internal approval on the basis of the foregoing terms and conditions as quickly as possible. Of course, the foregoing should not be construed in any way as a commitment for financing, as any such commitment or undertaking can only be in writing after internal loan approval has been obtained.

Any loan commitment must be written and state that it is a commitment and any other oral or written communications will not constitute a loan commitment. Any loan commitment will not be binding upon Bank of America or Borrower unless executed by both parties.

This Summary of Terms will expire at 5:00 p.m. CT on September 11, 2020 unless prior to that time Borrower executes this Summary of Terms and returns same to Bank of America. Following acceptance, this Summary of Terms will expire without notice at 5:00 p.m. CT on December 30, 2020. In no event will any expiration or termination of this Summary of Terms relieve Borrower or any other person from any obligation to pay fees, costs and expenses as described herein, all such obligations expressly surviving any such expiration or termination.

Sincerely,

BANK OF AMERICA, N.A.



Name: Valerie A. Williams
Title: Senior Vice President

Acknowledged and Agreed:

NH Canal L.P.,

A Texas limited partnership

By: NH Canal GP, LLC, a Texas limited liability company, its general partner

By: 
H. Chris Richardson, Manager

Date: 10-5-2020



Community Development Banking
333 S. Hope St, 20th Floor,
Los Angeles, CA 90071
CA9-193-20-31

Michael Petty
Senior Vice President
P (213) 621-4812
michael.k.petty@bofa.com

August 31, 2020

Chris Richardson
NH Canal LP
Blazer Building
4001 W. Sam Houston PKWY. North
Suite 100
Houston, Texas 77043

Re: Canal Lofts
Houston, Texas

Dear Chris:

This letter expresses the interest of Bank of America, N.A., and, or, its affiliates (“Investor”) in making an equity investment in a partnership for purposes of developing and owning a low-income senior housing project (the “Project”). This letter is intended to describe the terms and conditions of Investor’s proposed equity investment.

1. **Project.**

The Project will consist of the new construction of 100 affordable housing units for low-income families and 50 market-rate units contained in 2 residential elevator-served buildings, and the underlying land located in Houston, TX.

2. **Tax Credits.**

The Project has received a reservation in 2020 of federal low-income housing tax credits (the “Projected Federal Credits”) totaling \$1,500,000 per annum from the Texas Department of Housing and Community Affairs (the “Credit Agency”).

3. **Partnership.**

The Project will be owned and operated by NH Canal LP, a Texas limited partnership (the 'Partnership'), with NH Canal GP LLC, a Texas limited liability company, as General

Partner and Investor as Investor Limited Partner and an affiliate of Investor as Special Limited Partner. General Partner, Investor, and Special Limited Partner will enter into a Partnership Agreement (the 'Partnership Agreement'), which Partnership Agreement will be on substantially the same terms as the Amended and Restated Agreement of Limited Partnership of NH WLY LP, dated as of July 10, 2020, with modifications to reflect the terms of this Letter of Intent. General Partner will own a 0.01% interest in the Partnership; Investor will own a 99.99% interest in the Partnership as Investor Limited Partner; and Special Limited Partner will own a 0% interest (the “Percentage Interests”).

4. Project Financing.

General Partner contemplates that the Partnership will obtain the loans set forth below (the “Loans”):

- A. Construction Loan. A construction loan in an estimated amount of \$19,358,270 and with a term of 30 month(s) (the “Construction Loan”) will be provided by Bank of America on terms to be approved by Investor.
- B. Permanent Loans. The following permanent loans (the “Permanent Loans”) are expected to be made to the Partnership:

Loan type	Lender	Loan Amount	Interest rate	Loan Term	Amortization Term
<u>First Mortgage Loan</u>	Freddie Mac	\$8,525,000	3.84%	15 years	35 years
Subordinate, Residual Receipts	City of Houston (CDBG)	\$12,000,000	1%	40 years	n/a

The terms and conditions of each of the Loans and any other loan to the Partnership will be subject to Investor’s approval. Such loans will (i) expressly permit the admission of Investor into the Partnership and the potential transfers of the partnership interests by Investor and Special Limited Partner without consent of the maker of the loan provided that such transfers are permitted under the Partnership Agreement, and (ii) will provide Investor with notices of default and cure rights acceptable to Investor. All Permanent Loans will be non-recourse.

5. Other Parties.

- A. Developer. Canal Developers LLC.
- B. Guarantor. Blazer-Nantucket Holdings, LLC. Completion Guaranty from Blazer Building Texas LLC. Guarantors shall maintain liquidity of not less than \$2,500,000 and net worth of not less than \$5,000,000.
- C. Property Manager. Blazer Real Estate Services LLC. The Property Manager is affiliated with Developer, Guarantor, General Contractor, or General Partner.

- D. General Contractor. Education Based Housing, Inc. and Master Sub-Contractor is Blazer Building Texas LLC. The Master Sub-Contractor is affiliated with Developer and certain Guarantors. The Master Sub-Contractor will provide a Guaranteed Maximum Price Contract with 100% Payment and Performance bonding.

The qualifications and financial condition of each of the foregoing parties must be acceptable to Investor.

6. Capital Contributions.

Investor will make a total Capital Contribution equal to \$0.97 for each \$1.00 of Federal Tax Credits to which it will be entitled as a limited partner. Based on the Projected Credits for the Partnership this would amount to a total Capital Contribution of \$14,548,545 (the “Total Capital Contribution”). The Total Capital Contribution will be paid as follows:

Milestone	Conditions to be satisfied prior to payment	% Equity	\$ Equity
<u>Initial Capital Contribution</u>	(i) closing of the Partnership (ii) closing and initial funding of all construction financing for the Project (iii) receipt of commitments for all permanent financing on the Project with the interest rate fixed for at least 15 years (iv) evidence of either acquisition of, or a long-term leasehold interest in, the land and building for the Project (v) evidence the Partnership has received an allocation from the Credit Agency of 9% credits in an amount equal to the Projected Federal Credits (vi) evidence of satisfaction of 10% test has occurred or will occur prior to the date required by the agency (vii) receipt by the Investor of a tax opinion prepared by special tax counsel for the Partnership in a form which is acceptable to the Investor (viii) satisfactory completion of Investor’s due diligence	15%	\$2,182,282
<u>Completion Capital Contribution</u>	(i) the Bank has received the Bank’s Construction Consultant’s report evidencing 100% completion of the property (ii) temporary certificates of occupancy have been issued for each building (iii) the owner’s title policy has been amended to remove all mechanics lien exceptions This contribution will occur no earlier than 07/01/2022.	55%	\$8,001,700

<p><u>Conversion and Stabilization Capital Contribution</u></p>	<p>(i) the Project then has achieved at least three consecutive calendar months of a minimum of 1.20 to 1 debt service coverage on the Permanent Loans (which period must include the last day of the most recent calendar month) (ii) the Project is then at least 90% occupied (iii) all tax credit units have been leased to qualified tenants at least one time (iv) all Permanent Loans have closed and funded, or will close and fund concurrent with this Stabilization Capital Contribution (v) permanent certificates of occupancy have been issued for each building (vi) all reserves have funded or will fund concurrent with this payment This contribution will occur no earlier than 02/01/2023.</p>	<p>28%</p>	<p>\$4,073,593</p>
<p><u>Final Capital Contribution</u> (The balance of the unpaid Total Capital Contribution)</p>	<p>(i) the Credit Agency has issued a Form 8609 for each building (ii) a cost certification by a qualified accountant has been received in a form acceptable to Investor (iii) a copy of the recorded Extended Use Agreement has been received (iv) a copy of the compliance audit of the initial tenant files has been received (v) calculations of final adjusters have been prepared and agreed to This contribution may occur simultaneously with the Conversion and Stabilization Capital Contribution.</p>	<p>2%</p>	<p>\$290,871</p>

7. General Partner and Guarantor Obligations.

- A. Completion and Development Deficit Guaranty. General Partner and Guarantor will guarantee lien-free completion of the Project in a good and workmanlike manner substantially in accordance with plans and specifications as approved by Investor on or before July 1, 2022 (the “Completion Date”). General Partner and Guarantor will guaranty payment of all development costs, including all costs of achieving such lien-free completion, including all soft costs and construction period interest. Further, under this guaranty, General Partner and Guarantor will guaranty payment of all operating costs through the later of the date (i) the Project has achieved 90% occupancy for three consecutive calendar months, (ii) the Project is 100% complete, (iii) all tax credit units have been leased to qualified tenants at least one time, and (iv) all Permanent Loans have closed and funded. Payments made under this guaranty in excess of \$500,000 will not constitute loans to the Partnership and neither General Partner nor any Guarantor will have any right to receive any repayment on account of such payments. Payments in the aggregate up to \$500,000 will be treated as a loan at an interest rate not to exceed 8%.

- B. Operating Deficit Guaranty. General Partner and Guarantor will agree to loan to the Partnership any amounts required to fund operating deficits arising after the expiration of the Completion and Development Deficit Guaranty up to a maximum amount representing 6 months of operating expenses, replacement reserves, and must-pay debt service (the “Operating Deficit Loan Maximum”), currently estimated at \$680,000 and to be adjusted based on final underwriting. Any amounts so advanced will constitute loans (“Operating Loans”), at an interest rate not to exceed 8%, repayable only out of future available cash flow or out of available proceeds of a sale or refinancing. The Operating Deficit Guaranty will terminate 60 months after the expiration of the Completion and Development Deficit Guaranty.
- C. Repurchase. General Partner and Guarantors will be required to repurchase the Investor’s interest upon certain material events including but not limited to: failure to achieve completion by December 31, 2022, failure to achieve stabilization within 24 months of completion, failure to place the Project in service prior to the date required by the Internal Revenue Code, or loss of permanent financing commitments. The General Partner and Guarantors will repurchase the Investor’s interest in the Partnership at a price equal to the Investor’s Capital Contributions paid to date, plus the actual out of pocket costs to the Investor (including legal, accounting, and consulting) plus 10% interest per annum, less any net tax credits received and retained by the Investor.
- D. Tax Credit Guaranty and Indemnification. General Partner and Guarantors will indemnify Investor for the failure to achieve Projected Federal Credits. Should the actual tax credits be lower than the Projected Federal Credits, which shortage is caused as a result of other than (i) a change in applicable law, or (ii) a transfer by any limited partner of its interest in the Partnership, Investor’s capital contributions will be adjusted downward by the amount of the difference and any interest or penalties owed by Investor. Subsequent to the payment of Investor Capital Contributions, General Partner and/or Guarantors will, within 75 days of the end of each calendar year, pay to Investor an amount on an after tax basis equal to the difference in actual tax credits plus any interest or penalties owed by Investor. This guaranty will run for the 15-year term of the compliance period.
- E. Taxable Income Prior to Stabilization. To the extent that the Partnership generates any taxable income prior to Stabilization, the General Partner and Guarantor will be obligated to pay for any tax liability of the Investor Limited Partner due to such taxable income. This includes, but is not limited to, any interest income generated from Partnership assets (such as Guaranteed Investment Contracts) that exceeds the deductible investment expense allocated to the Investor Limited Partner.
- F. Adjuster Provisions. The Capital Contributions are based upon your projection of total federal Low-Income Housing Tax Credits of \$14,998,500 (“Original Projected Credit”) to Investor, which in turn is based upon certain assumptions and projections. The following federal (and, if applicable, state) credits are to be delivered to the Investor:

Credit	2022	2023 - 2031	2032
<u>Federal Low Income Housing Tax Credit</u>	\$874,913	\$1,499,850	\$624,938

The actual amount of Low-Income Housing Tax Credits may in fact change after the determination of eligible and qualified basis. Accordingly, the Capital Contribution may be adjusted when (i) final projections of the amount of Low-Income Housing Tax Credits are completed and/or (ii) upon or after actual completion of the project. Upon satisfaction of all conditions and prior to payment of the Final Capital Contribution, the Partnership Accountant will provide the Investor with Revised Economic Projections and the Final Credit Amount determined by the Accountants.

- G. Credit Adjuster. To the extent such final projected amount of Low-Income Housing Tax Credits varies from the Original Projected Credits, Investor’s capital contribution will be adjusted by \$0.97 per federal credit on such variance in the delivery of actual credits to Original Project Credit (as reflected in cost certifications or Form 8609).
- H. Timing Adjuster. Investor’s federal credit capital contribution will be adjusted to reflect the later or earlier than projected delivery of federal credits with respect to the first year and, if applicable, the second year, of the credit period, based on a reduction in price of \$0.65 for every federal credit dollar deferred, or an increase based on 65% of the price per credit established in Section 6 above for every federal credit dollar accelerated.

In no event will the application of the above adjusters cause Investor's Capital Contributions to increase by more than 5% without approval from Investor's Investment Committee. If due to such adjusters, Investor’s capital contributions are to be adjusted downward by more than the amount of Investor’s then unpaid capital contributions, then General Partner and Guarantor will guaranty payment of the shortfall in such adjustments. The General Partner’s and Guarantor’s obligations will be more specifically set forth in the Partnership Agreement and other related documents.

8. Allocation of Tax Credits, Depreciation, Profits and Losses.

The Tax Credits, depreciation, operating profits and losses will be allocated in accordance with the Percentage Interests.

9. Distribution of Cash Flow.

- A. Operating Cash Flow. Operating cash flow will be utilized as follows:
 - (i) payment of debt service on the Permanent Loans and other operating expenses;
 - (ii) additions to a funded capital replacement reserve as provided in the Partnership Agreement;

- (iii) payment of the Asset Management Fee (\$5,000 per year) to the Special Limited Partner, which fee will accrue if not paid;
 - (iv) payment of the Deferred Developer Fee,
 - (v) payment of the Partnership Management Fee (\$5,000 per year) to the General Partner, which fee will accrue if not paid;
 - (vi) repayment of any Operating Deficit Loans made by General Partner;
 - (vii) replenishment of the Operating Reserve Account;
 - (viii) payment of an incentive management fee, not to exceed 90% of cash flow;
 - (ix) then to the partners in accordance with the Percentage Interests.
- B. Sale or Refinancing Proceeds. Distributions of proceeds from a sale or refinancing of the Project will be distributed as follows:
- (i) payment of debt service on the Permanent Loans and other operating expenses;
 - (ii) to the extent reasonably determined necessary by the General Partner, additions to a funded capital replacement reserve;
 - (iii) payment of the federal and state “exit” taxes incurred on any negative capital account, if any, of the Investor;
 - (iv) payment of any unpaid, accrued Asset Management Fee;
 - (v) payment of the Deferred Developer Fee;
 - (vi) payment of any unpaid, accrued Partnership Management Fee;
 - (vii) repayment of any Operating Deficit Loans made by General Partner; and
 - (viii) 90% to the General Partner, and 10% to the Investor.
- C. Developer Fee. General Partner will earn a Developer Fee, projected to be \$3,656,500. The timing of the payments toward the Developer Fee is subject to the terms of the Construction Loan, which will be subject to approval by Investor. In the event that the amount of the Final Capital Contribution is insufficient to pay the remaining balance of the Developer Fee, such unpaid balance will be deferred as provided in the Partnership Agreement, with interest at a rate not to exceed AFR, and will be paid out of Operating Cash Flow and Net Proceeds as provided above, provided that the amount of the unpaid balance must be paid within 13 years after 100% completion of the property.

10. Property Manager.

Blazer Real Estate Services LLC will be the Project's initial property manager. The Property Manager will earn a fee equal to a maximum of 5% of the Project's gross collected rents. If the Property Manager is an affiliate of General Partner, Guarantor, or Developer, then the Property Manager may be terminated as Property Manager in the event of the removal of General Partner.

11. Depreciation.

For the purposes of the pricing contained in this Letter of Intent, we have assumed the Company will depreciate its residential rental property over a 30 year recovery period.

12. Replacement Reserves.

\$300 per unit annually, or greater if required by any Project lender, will be funded from cash flow into a reserve account.

13. Debt Service Reserve.

\$321,948, or an amount equal to 6 months' of debt service, will be funded upon Permanent Loan Conversion into a Debt Service Reserve account. These funds may be used to pay debt service during the Operating Deficit Guaranty period identified in Section 7B above. The Debt Service Reserve will be maintained until the later of (i) 36 months after payment of the Conversion Installment, or (ii) the date on which the Project has achieved an average Debt Service Coverage Ratio of at least 1.20 calculated over the preceding 6 consecutive calendar months, provided that such 6 month period began no earlier than 30 months after payment of the Conversion Installment.

14. Investor Review.

As set forth in the Partnership Agreement, Investor will have the right to inspect the Project during and after construction and to review construction loan disbursement requests and other financial and operations matters of the Project and the Partnership.

15. Reporting.

The Partnership will be required to prepare quarterly and annual reports in form and substance satisfactory to Investor as set forth in the Partnership Agreement.

16. Additional Partnership Agreement Terms.

The Partnership Agreement will provide for customary covenants, rights to approve major Partnership matters, representations and warranties, defaults, (including the right to remove the General Partner for bankruptcy, fraud, violations of representations and warranties and other removal rights that are typically held by Investors in low-income housing tax credit transactions), remedies, and indemnities (including Environmental Indemnity) to be more fully described in the Partnership Agreement. The Partnership will carry insurance acceptable to Investor.

17. Transfer of Investor Interest.

Investor will have the right to transfer its interest in the Partnership, and to have the transferee admitted as a substitute limited partner: (i) to any affiliate of Investor, (ii) to any other person or entity provided that (A) Investor will remain liable to make all capital contributions outstanding at the time of the transfer or (B) the net worth of the proposed transferee will be acceptable to General Partner in its reasonable discretion, or (iii) to a partnership or limited liability company in which the Investor is the general partner or managing member. Investor shall assume all costs incurred by the Partnership in connection with an assignment of its interests.

18. Transfer of General Partner Interest.

General Partner will not sell, transfer, assign, pledge or encumber any portion of its interest in the Partnership without the prior written consent of Investor.

19. Bank Accounts.

All bank accounts of the Partnership will be maintained with Investor.

20. Conditions to Closing.

Investor's investment in the Partnership in accordance with this letter is subject to the satisfaction of the following conditions precedent on or before the Closing Date, which will occur on or after February 1, 2021.

- A. Due Diligence. Investor's satisfactory due diligence review, in its sole and absolute discretion, of all matters pertaining to the Partnership, the General Partner, the Guarantor, the Developer and the Project including, without limitation:
- (1) the construction budget, the scope of work, the construction schedule, all required permits, the construction contract, and all other construction and development matters;
 - (2) title, survey, zoning, engineering and environmental matters;
 - (3) any ground lease, if applicable;
 - (4) market studies, appraisals, and all other matters regarding project feasibility;
 - (5) all aspects of the project's capital structure: the terms of all loans, grants, tax increment financing and equity contributions;
 - (6) debt service coverages, reserves, rental subsidies, income, expenses, and all other assumptions underlying the Projections including rental discounts to market of no less than 15% for LIHTC units, 20% for market units and debt service coverage of no less than 1.20;

- (7) tax matters, including all aspects of all tax-exempt bonds;
 - (8) government benefits, government consents, government requirements and all other regulatory aspects of the Project;
 - (9) all formation documents and government filings of the Partnership, the General Partner and the Developer; and
 - (10) the financial condition of the General Partner, Guarantor and the Developer.
- B. Negotiation of Satisfactory Documentation. The negotiation of a final Partnership Agreement and related documents (collectively the “Project Documents”) that are satisfactory to Investor in its sole and absolute discretion. Investor’s attorney will prepare and send to General Partner and its attorney the form of the Project Documents.
- C. Opinions. Investor’s receipt of corporate and tax opinions rendered by counsel to General Partner satisfactory to Investor, in form and substance acceptable to Investor.
- D. Consents. Receipt of all necessary consents of governmental authorities and lenders.
- E. Title Insurance. Receipt of a title insurance policy in an amount and in a form acceptable to Investor, provided the amount of such title insurance must be at least equal to the aggregate of the Total Capital Contribution plus all Permanent Loans. The policy must include “Fairways” and “Non-Imputation” endorsements.
- F. Construction Commencement. Construction must start no later than May 1, 2021.
- G. Place in Service. Temporary certificates of occupancy for all buildings to be received no later than September 30, 2022.
- H. Miscellaneous. Receipt of other items or information reasonably required by Investor.

21. Transaction Expenses.

The Investor is responsible for all of the Investor’s transaction expenses including its legal, market analysis, and accounting fees up to \$85,000. The General Partner is responsible for all such costs to the extent they exceed \$85,000. Investor’s expenses will be paid in the form of capital contribution from the Investor, which is separate from and in addition to the Capital Contribution in paragraph 6. If the Partnership fails to close, the entity signing this letter of intent on behalf of the General Partner will be responsible for reimbursing the Investor for all of the Investor’s transaction expenses.

22. Termination.

If the transaction contemplated by this letter fails to close by the Closing Date, as extended by the parties, this letter will be null and void and of no further force and effect, and, neither party will have any claim or demand whatsoever against the other party in connection with this letter, its execution or termination, except the Investor's transaction expenses identified above.

23. Right of First Refusal.

At the end of the 15 year tax credit compliance period, the General Partner will have a right of first refusal to purchase the Property for an amount equal to the greater of (a) fair market value of the Property, or (b) outstanding debt plus taxes payable as a result of the sale. The foregoing is subject to confirmation, or approval by TDHCA, that this right was reserved for a non-profit in the tax credit application.

24. Put Option.

At any time after payment of Investor's Total Capital Contribution, Investor may require that General Partner purchase Investor's Interest and Special Limited Partner's Interest subject to all then existing liens and encumbrances to title for an amount equal to \$100 (the "Put Option").

25. Tax Disclosure.

Notwithstanding anything to the contrary contained in the Partnership Agreement or any other agreement between the parties hereto, or in any offering materials pertaining to the Project, Investor and each officer, employee, representative or agent of Investor may disclose to any and all persons, without limitation of any kind, (i) the tax treatment and tax structure of the Partnership and any of the Partnership's transactions or activities, and (ii) all materials of any kind (including opinions and tax analysis) that are provided to Investor regarding its investment in the Partnership and/or such transactions or activities of the Partnership. This authorization as to tax disclosure is effective retroactively to the commencement of any discussions between the parties hereto or any of their agents or representatives.

26. Material Adverse Change.

Bank of America's obligations hereunder shall terminate if, prior to closing, Bank of America determines, in its sole judgment, that there shall exist any conditions regarding the Property, or the operations, business, assets, liabilities or condition (financial or otherwise, including credit rating) of Borrower, Guarantor, or any tenants or there shall have occurred a material adverse change in, or there shall exist any material adverse conditions in, the market for syndicated bank facilities or the financial, banking, credit or debt capital markets generally, that could be expected to cause the potential Investment to go into default or prevent any guarantor from performing its obligations under any guaranty or to materially and adversely affect the value or marketability of the Investment or the Property.

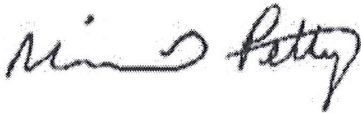
27. Expiration.

Canal Lofts LOI

This Letter of Intent will expire at 5:00 p.m. on that date which is five (5) business days from the date hereof unless you execute this Letter Of Intent and return it to us prior to that time, which may be by facsimile transmission. This letter is not intended as a commitment or offer by Investor to invest in the Partnership or the Project, but is intended only to summarize for discussion purposes the equity investment it is considering at this time. Investor must obtain the approval of its Investment Committee with respect to any such investment. After receipt of your signature on this Letter Of Intent and after you provide any additional information that may be required, we will proceed with the necessary due diligence to process your request for Investment Committee Approval.

Please indicate your agreement and acceptance of the foregoing by signing the enclosed copy of this letter and returning it to the undersigned. We look forward to working with you on this transaction.

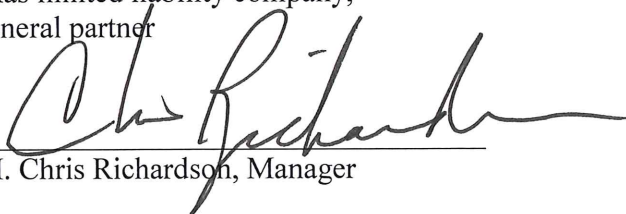
Bank of America, N.A.



By:
Name: Michael Petty
Title: Senior Vice President

Agreed and Accepted:

NH Canal LP, a Texas Limited Partnership
By: NH Canal GP LLC,
a Texas limited liability company,
its general partner

By: 
H. Chris Richardson, Manager

Date: 10/05/2020

cc: Valerie Williams, Bank of America Merrill Lynch
Joanna Lee, Bank of America Merrill Lynch

20015

New Caney Oaks

From: [Devin Baker](#)
To: [Marni Holloway](#)
Cc: [Alena Morgan](#); [Jim Washburn](#); [Craig Washburn](#); [Rebecca Armer](#)
Subject: 20015 - Waiver Request
Date: Tuesday, November 17, 2020 2:48:27 PM
Attachments: [image001.png](#)
[20015 -NewCaneyOaks -RTPWaiverRequest \(11.17.20\).pdf](#)

Ms. Holloway,

Please see attached Readiness to Proceed waiver request for the USDA Acq/Rehab application, New Caney Oaks (#20015). I have uploaded this same request to the server.

We appreciate Staff's, and the Board's, consideration in this matter.

Thank you,

Devin P. Baker

SVP, Development and Acquisitions
P.O. Box 489 New Caney, TX 77357
D [281.213.5366](tel:281.213.5366) | F [281.689.0103](tel:281.689.0103)
www.lcjcompanies.com

LCJ Dev logo - Email



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November 17, 2020

Marni Holloway
Multifamily Finance Director, TDHCA
221 E. 11th Street Austin, TX 78701
marni.holloway@tdhca.state.tx.us

Re: #20015 New Caney Oaks – Readiness to Proceed for USDA Developments

Ms. Holloway,

In regard to the selection of Readiness to Proceed points by New Caney Oaks Housing, Ltd. (the “Applicant”), and LCJ Development, Inc. (the “Developer”), in the 2020 Housing Tax Credit application round, please see below explanation and timeline of events that will likely cause #20015 New Caney Oaks (the “Development”) to be unable to meet the November 30, 2020 deadline.

As the Department is well aware, USDA is currently implementing a national reorganization that will take all responsibilities out of each respective state office and hold them in four (4) nationwide regional branches. The realignment was formally announced on July 7, 2020, however, as of October 6, 2020, USDA has still not able to fill the Chief Processing nor the Chief Underwriter position for the South Region (for which Texas is designated). It is our understanding that Ms. Tammy Daniels will temporarily fill the position as Acting Branch Manager until one is assigned. On November 9, 2020, we were initially contacted by our designated processing analyst who will review the transfer application before sending to underwriting. We are told this process could take up to a minimum of sixty (60) days before approval and closing.

As a part of the tax credit application, a USDA letter of transfer request is required (included herein). Submitted to our state loan specialist, Amanda Ayers, on February 10, 2020, the full transfer application was receipted by USDA on the 24th of that month. The Developer has made its best good faith effort to close by the selected deadline, and all other parties (i.e. syndicator/investor, construction lender, permanent lender, title insurer, etc.) are willing and able to do the same. Unfortunately, the final closing is, and will be, conditioned on the USDA transfer.

The Developer has selected Readiness to Proceed on two prior applications (#18077 and #19058) since originally implemented and was able to satisfy the deadline requirement each time without concern.

COVID 19 related delays aside, the Applicant believes that, without the unforeseen USDA restructuring, the closing deadline would be met for this Development.

For these reasons, a request is made to the Department that all USDA Acquisition/Rehab Developments be waived of any penalties associated with the closing deadline for 2020. We appreciate your consideration and are available to discuss at any time.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Baker', with a long horizontal flourish extending to the right.

Devin Baker

SVP, Acquisitions/Development

(281) 689-2030 ext.128

dpbaker@lcjcompanies.com

From: [Marni Holloway](#)
To: [Alena Morgan](#)
Subject: FW: Potential Closing Delay
Date: Tuesday, November 24, 2020 9:00:21 AM

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Reminder for Direct Loan Borrowers: TDHCA will not close earlier than 30 days after receipt of complete due diligence documents. We will not honor closings scheduled without our confirmation.

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.

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

From: Conway, Nancy - RD, Phoenix, AZ <nancy.conway@usda.gov>
Sent: Tuesday, November 24, 2020 8:51 AM
To: dpbaker@lcjcompanies.com
Cc: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Subject: Potential Closing Delay

Dear New Caney Oaks Housing, LTD (consolidation),

We wanted to reach out and discuss end of year timelines for your transaction. As you are aware, we recently went through a reorganization and some functional realignments. We have now had the opportunity to review all documentation associated with your transaction. Based on the current information available, your application may not meet your proposed closing deadline. If there is additional funding, such as Low-Income Housing Tax Credits (LIHTC), associated with your transaction, please ensure you are able to receive an extension. If there are any issues with outside additional funding, we are happy to communicate directly with the Housing Finance Agency or other capital provider to explain the need for an extension.

Please reach out to CJ Michels at cjmichels@usda.gov to discuss timelines further.

If you have already discussed your closing date with Rural Development within the past week please disregard this email.

Thank you for your patience,

Lauryn Enrico
Director, Production and Preservation Division
Multifamily Housing Programs
Rural Development
United States Department of Agriculture
Phone 202.401.0007
www.rd.usda.gov | “Committed to the future of rural communities”

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.



Rural Development

February 24, 2020

OFFICE OF THE
STATE DIRECTOR

101 S. Main Street
Suite 102
Temple, TX
76501

Voice 254.742.9770
Fax 844.496.8122

Mr. Devin Baker
LCJ Development, Inc.
P.O. Box 489
New Caney, Texas 77357

RE: New Caney Oaks, Ltd. – Transferors
New Caney Oaks II, Ltd.
New Caney Oaks Housing, Ltd. – Transferee
Request for Transfer and Assumption

Dear Mr. Baker:

This letter is to confirm that you have informed the Agency of your intentions to consolidate New Caney Oaks Apartments I and II and transfer to New Caney Oaks Housing, Ltd.

We are in receipt of a full application, including the SF 424, "Application for Federal Assistance," Preliminary Assessment Tool, Executive Summary and Form 3560-1, "Application for Partial Release, Subordination, or Consent." The Agency will review the request for legal and financial feasibility, to include the organizational structure, rents, and ability to maintain the property.

If approved, the transfer will be at new rates, and terms. As of today, our current interest rate is 3.0%, which would be reduced to 1.00% interest credit rate. The term will be 30 years with an amortization period up to 50 years. The Agency is aware that you have applied with Texas Department of Housing and Community Affairs (TDHCA) for tax credit funds.

The Agency is also aware that the property is seeking Readiness to Proceed points, which would require the transfer to close prior to the last business day of November, 2020. This deadline should be attainable, provided that the submitted application is complete, in accordance with HB-3-3560, Attachment 7-B-1 and applicable Agency regulations.

If you have any questions regarding the above, please feel free to contact Amanda Ayers, Loan Specialist, at (254) 742-9778 or email at amanda.ayers@usda.gov.

Sincerely,

EDD HARGETT
State Director

cc: Area Director Sabrina Glenn, Lufkin Area Office
Huntsville Area Office

20075

New Hope Housing Savoy



New Hope Housing

November 30, 2020

Texas Department of Housing and Community Affairs
Attn: Marni Holloway, Director of Multifamily Finance
221 East 11th Street
Austin, TX 78701
Delivered via email: marni.holloway@tdhca.state.tx.us

Re: New Hope Housing Savoy (TDHCA#20075) Waiver Request for Readiness to Proceed Deadline

Dear Marni,

Please accept this letter as a waiver request for NHH Savoy, Ltd. (the “Partnership”) and Houston Area Community Development Corporation (HACDC, the “Developer”), HTC Application #20075 of 10 TAC 11.9(c)(8), related to Readiness to Proceed. Pursuant to this scoring incentive, “Failure to close all financing and provide evidence of an executed contract by the November deadline will result in penalty under 10 TAC 11.9(f) as determined solely by the Board.”

We respectfully request that the Board grant a waiver under 10 TAC 11.9 (f) of the 2020 Qualified Allocation Plan, and not assess a penalty to NHH Savoy, Ltd. and the Developer in the subsequent 2021 9% Competitive Program.

In these unprecedented times, with local governmental delays caused by the global pandemic, we find that our longstanding financing partner, the City of Houston, cannot meet this deadline. The City has been primarily focused on the public health crisis. Normal municipal activities such as city council approvals for multifamily housing developments have largely halted in the wake of COVID-19. The NHH Savoy development is dependent upon the \$12,000,000 in capital financing from the City of Houston and until this source of funding receives final approval from City Council, the project cannot proceed with closing.

Because the City of Houston’s process for funding approval is not developer-driven, the failure to close financing by the November deadline is well beyond HACDC/New Hope Housing’s control. Additionally, federal funding prohibits land and finance closing without HUD’s environmental clearance, which for NHH Savoy is still under review with the Texas General Land Office.

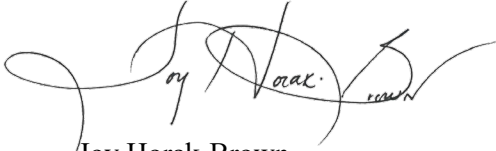
HACDC successfully completed and met all requirements with Readiness to Proceed outlined in the 2018 QAP with the #18147 NHH Dale Carnegie project. We faithfully executed on the Readiness deadline in 2018, demonstrating our capacity and commitment to meeting the requirements of the QAP in a timely manner.

Our request for this board waiver brings with it gratitude for more than a decade of partnership with the TDHCA and a continued commitment to developing and operating the finest quality housing for the most vulnerable. We will continue to push toward closing as quickly as the City of Houston will

allow, and the start of construction to deliver units that are so needed in our community – now more than ever.

We appreciate your thoughtful consideration of this request, and we look forward to continuing to craft, together with you, the path forward to best serve Texans in need.

Sincerely,

A handwritten signature in black ink, appearing to read "Joy Horak-Brown". The signature is fluid and cursive, with the first name "Joy" being the most prominent.

Joy Horak-Brown
President & CEO

20077

Lockwood South Apartments



December 18, 2020

Ms. Alena Morgan
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Request for Waiver of Penalties under 10TAC §11.9(f)

Dear Ms. Morgan:

I am writing on behalf of two Applicants for 2020 Housing Tax Credits: Connect South Apts, LP, the Applicant for Application #20082 Connect South Apartments; and Lockwood South Apts, LP, the Applicant for Application #20077 Lockwood South Apartments. Both of the proposed developments are to be located in Urban Region 6 within the Houston City Limits.

In both cases, the Applicant is seeking a waiver of any penalties in the 2021 Tax Credit round related to a failure to meet the Readiness to Proceed closing deadline of November 30, 2020. Numerous circumstances beyond the Applicant's control forced a slowdown in the closing process.

Both developments received Resolutions of Support from the City of Houston as well as recommendations for CDBG-DR funding as administered by the City of Houston to support the developments. The City of Houston's approval of CDBG-DR funding has been delayed due to a number of factors that the Applicant could not have reasonably foreseen when it submitted an application on March 1, 2020.

First, in late March of this year Covid-19 precautions slowed the transaction of business overall, while placing additional pressures and responsibilities on governmental entities such as the City of Houston's Neighborhood Housing division which oversees the administration of the CDBG-DR funding and its subsequent contracts. As a result, a commitment of funds from the City of Houston was not forthcoming until September 9, 2020 for Application #20077 (Lockwood) and October 28, 2020 for Application 20082 (Connect South).

The financial viability of each development is dependent upon these funds and understandably, without a commitment and contract in place, the lender and equity providers for these transactions were unwilling to move forward with a closing, which normally takes about 90 days. Even if the Applicant had been able to start the closing process the day these commitments were received, a November 30th Closing would have been impossible. Regrettably, the City of Houston staff must still take these commitment letters to the City Council for approval to enter into a contract, which is anticipated in January of 2021.

Secondly, CDBG-DR funding requires § completion of the Part 58 Environmental Clearance prior to release of CDBG-DR funds and prior to any "Choice Limiting Activities" such as a financial

closing. Although the completion of a Part 58 Environmental report is not difficult, it is a lengthy process requiring the approval of multiple governmental agencies including the State Historic Preservation Office and other organizations each of which is allowed a 30-day timeframe to respond. The Part 58 process is administered by the City and did not start until the final commitment letters were received on the dates afore mentioned. Initially these clearances were to be developed and requested by the City of Houston, which meant that staff there had to conduct more than a dozen such reviews in a limited time frame. With employees working remotely on both ends of the report (requesting clearance and providing clearance) the process was slowed. To date, both applications are still awaiting their Part 58 approvals.

These delays were not only unforeseeable, but they were also clearly beyond the control of the Applicant in each case. We hope that you will find these circumstances worthy of a waiver of penalty under 10 TAC §11.9(f).

I appreciate your time and consideration,

A handwritten signature in black ink, appearing to read "Sarah Andre", with a long horizontal flourish extending to the right.

Sarah Andre
Consultant to the Project

20082

Connect South Apartments



December 18, 2020

Ms. Alena Morgan
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Request for Waiver of Penalties under 10TAC §11.9(f)

Dear Ms. Morgan:

I am writing on behalf of two Applicants for 2020 Housing Tax Credits: Connect South Apts, LP, the Applicant for Application #20082 Connect South Apartments; and Lockwood South Apts, LP, the Applicant for Application #20077 Lockwood South Apartments. Both of the proposed developments are to be located in Urban Region 6 within the Houston City Limits.

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I appreciate your time and consideration,

A handwritten signature in black ink, appearing to read "Sarah Andre", with a long horizontal flourish extending to the right.

Sarah Andre
Consultant to the Project

20097

Regency Lofts

Alena Morgan

From: Donna Rickenbacker <donna@marqueconsultants.com>
Sent: Tuesday, December 15, 2020 6:48 PM
To: Alena Morgan
Cc: Cheryl Lawson; Ray.Miller@houstontx.gov
Subject: RE: IMPORTANT RE: Readiness to Proceed Deadline for Regency Lofts (20097)
Attachments: 20097_Regency_Lofts_Readiness_Waiver.pdf; 20097_Regency_Lofts_Evidence of Waiver Upload.pdf

Hello Alena,

Attached please find our Readiness Penalty Waiver Request and evidence that the request was uploaded to the U-Serv Account for Regency Lofts.

Please let me know if you have any questions or comments.

Thank you,
Donna Rickenbacker
(713) 560-0068

From: Alena Morgan [mailto:alena.morgan@tdhca.state.tx.us]
Sent: Tuesday, December 15, 2020 11:06 AM
To: Donna Rickenbacker <donna@marqueconsultants.com>; clawson@walioo.org
Subject: IMPORTANT RE: Readiness to Proceed Deadline for Regency Lofts (20097)
Importance: High

To Whom It May Concern,

Upon review of your Carryover and Serv-U submissions, it appears Regency Lofts (20097) did not meet its Readiness to Proceed deadline pursuant to 10 TAC §11.9(c)(8).

If this is an error or you would like to request a Penalty Waiver before the January 2021 Board meeting, please respond to this email immediately.

Thank you,

Alena R. Morgan, JD
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St., Austin, TX 78701
Office: 512.936.7834
TDHCA COVID-19 ASSISTANCE: <https://www.tdhca.state.tx.us/covid19-response.htm>.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC §11.1(b), there are important limitations and caveats.

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

DWR DEVELOPMENT GROUP, LLC

6300 West Loop South, Ste. 670

Bellaire, Texas 77401

(713) 940-9940 – p

(713) 583-8858 – f

Donna@DWRDevelopment.com

Via Serv-U HTTP Portal

December 15, 2020

Alena R. Morgan, JD
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Re: TDHCA No. 20097-Regency Lofts; Readiness to Proceed

Dear Alena,

Regency Lofts is a proposed 120-unit apartment community that will be located in Harris County, Texas, a county declared by the Federal Emergency Management Agency to be eligible for individual assistance. DWR Regency 20, LP, the owner of Regency Lofts (the “Owner”), selected points under 10 TAC §11.9(c)(8) of the QAP rules relating to construction in specific disaster counties.

The Owner is hereby seeking a waiver of a penalty under 10 TAC §11.9(f) for failing to meet the deadline to both close financing and provide evidence of an executed construction contract by November 30, 2020 pursuant to the requirements of 10 TAC §11.9(c)(8).

First, please be aware that the Regency Lofts 9% application was not a “priority” application until after the June 25, 2020 board meeting and the reordering of applications in Region 6. See **Attachment 1**-Region 6 June 26, 2020 application log. This event should have resulted in an extension of the November deadline. Provided, however, upon becoming a priority application, we made every effort to honor the QAP rules and close by 11/30/20.

Since the City of Houston (“COH”) awarded DR-17 grant funds to the transaction, we sought and received our Authority to Use Grant Funds (AUGF) from the GLO in mid-November. We also had building design plan approvals and a fully executed construction contract before the end of the month with every intentions of closing and funding Regency Lofts in a timely manner. See **Attachment 2**-extracted pages from the Construction Contract dated November 24, 2020.

Unfortunately, we were not able to get to Houston City Council with final COH loan documentation until December 2, 2020. We were pushed back by 2-weeks while the COH and the GLO finalized an agreement on the administration of DR-17 and other housing disaster funds made available to the COH. We closed on December 10, 2020, one week following City Council approval. See **Attachment 3**-Settlement Statement with a Settlement/Disbursement Date of

TDHCA #20097 – Waiver Request

December 15, 2020

Page -2-

Date of December 10, 2020. See extracted pages from the following recorded conveyance and loan documents with the effective date of December 10, 2020:

- a. **Attachment 4** – Deed;
- b. **Attachment 5** – COH Deed of Trust; and
- c. **Attachment 6** – Amegy Deed of Trust.

To the best of my knowledge, as of the date of this request, we are the only Region 6 2020 9% transaction to close its financing with the COH. I hope that TDHCA will take into consideration when this transaction became a “priority” application and the efforts made to still timely close by November 30, 2020 when determining whether Regency Lofts should be granted the requested penalty waiver.

I also hope that TDHCA will evaluate each Applicant seeking a waiver on a case by case basis. I do not think it would be fair to allow certain Applicants that had no intentions of closing on time to piggy back off of those that did and provided evidence of such efforts to TDHCA. There should be some performance expectation that the Board can use to determine who should or should not be penalized for failing to comply with a Governor mandated scoring item.

Closing deals by 11/30/20 takes a lot of man (and women) power especially those in the COH that received DR-17 funds. The COH Multifamily Team are a great group that can and do work with all developers on their funding and expedited closing requests. I hope these points are taken into consideration.

Sincerely,



Donna W. Rickenbacker
Principal

cc: Cheryl Lawson – clawson@walipp.org
Executive Director-WALIPP

Ray Miller – ray.miller@houstontx.gov
Assistant Director, COH Multifamily

Application Number	Development Name	Development Address	City	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	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)(A)	\$11.9(d)(5)(B)	\$11.9(d)(6)	\$11.9(d)(7)	Best Possible Score	Review Status	Underwriting Status	Notes				
Region 4/Rural																																			
20262	Abbingtion Park	SEC S. Standish St. / W	Henderson	75654	Rusk	4	Rural				NC	58	6	64	Elderly	917,831		Breck Kean	48401950800	133	0	17	4	0	8	4	0	166	C	UR					
20216	Henderson Trails	E side of US 79 at Pam	Henderson	75654	Rusk	4	Rural				NC	60	0	60	Elderly	945,766		Michael Fogel	48401950900	132	0	17	4	0	8	4	0	165	C	UR					
20016	Reserve at Sulphur Springs	NWC League St. S. / Bc	Sulphur Springs	75482	Hopkins	4	Rural				NC	72	0	72	Elderly	1,000,000		Brian McGeady	48223950402	121	0	0	4	8	0	4	0	137	UR						
Estimated Amount Available		\$1,591,791														Total HTCs Requested		2,863,597																	
Region 4/Urban																																			
20167	Laurel Flats	1208 E. Houston	Tyler	75702	Smith	4	Urban				NC	88	1	89	General	1,124,289		April Engstrom	48423000900	135	0	17	4	0	8	4	0	168	C	UR					
Estimated Amount Available		\$1,208,191														Total HTCs Requested		1,124,289																	
Region 5/Rural																																			
20240	Livingston Pioneer Crossing	~ 1549 N Dogwood Av	Livingston	77351	Polk	5	Rural				NC	76	4	80	Elderly	1,046,000		Noor Jooma	48373210302	133	5	17	4	8	0	4	0	171	C	UR					
20288	Providence at Buna	330 CR 835	Buna	77612	Jasper	5	Rural		x		NC	80	0	80	Elderly	1,046,000		Miranda Sprague	48241950700	132	5	17	4	8	0	4	0	170			Not Recommended				
Estimated Amount Available		\$1,056,975														Total HTCs Requested		2,092,000																	
Region 5/Urban																																			
20232	Beaumont Trails	SWQ Spindletop Sq / N	Beaumont	77703	Jefferson	5	Urban				NC	57	3	60	Elderly	869,106		Michael Fogel	48245000400	135	0	14	4	0	0	4	0	157	UR						
20316	Virginia Flats	2250 W. Virginia St.	Beaumont	77705	Jefferson	5	Urban				AcR	78	32	110	General	903,811		Miranda Sprague	48245002300	125	5	17	4	8	0	4	0	163	C		Not Recommended				
Estimated Amount Available		\$913,180														Total HTCs Requested		1,772,917																	
Region 6/Rural																																			
20329	Fish Pond at Huntsville	~ 148 FM 247	Huntsville	77340	Walker	6	Rural				NC	48	0	48	Elderly	900,000	x	David Fournier	48471790102	134	5	17	4	8	0	4	0	172	C	UR					
20210	Amber Ridge Apartments	114 Woodway Dr	Angleton	77515	Brazoria	6	Rural				NC	42	6	48	General	570,864		Vaughn C. Zimmerma	48039662100	132	5	17	4	0	8	4	0	170	UR						
Estimated Amount Available		\$600,000														Total HTCs Requested		1,470,864																	
Region 6/Urban																																			
20075	New Hope Housing Savoy	~ 6301 Savoy Dr.	Houston	77036	Harris	6	Urban		x		NC	120	0	120	Supp Hsg	1,500,000		Joy Horak-Brown	48201432801	132	5	17	4	8	0	4	7	177	C	UR					
20114	3300 Caroline Street	3300 Caroline St.	Houston	77004	Harris	6	Urban		x		NC	149	0	149	Supp Hsg	1,500,000		Neal Drobenare	48201312500	141	5	17	4	8	0	4	0	179	UR						
20223	Campanile on Briar Hollow	SEC Post Oak Blvd./Bri	Houston	77027	Harris	6	Urban				NC	72	13	85	Elderly	1,500,000		Les Kilday	48201411300	139	5	17	4	8	0	4	0	177	C	UR					
20141	Richmond Senior Village	5615 Richmond Ave.	Houston	77057	Harris	6	Urban				NC	100	25	125	Elderly	1,500,000		Doak Brown	48201432702	138	5	17	4	8	0	4	0	176	C	UR					
20204	Heritage Senior Residence	NEC Center St. / Moy	Houston	77007	Harris	6	Urban				NC	94	41	135	Elderly	1,500,000		Dan Wilson	48201510600	138	5	17	4	0	8	4	0	176	C	UR					
20011	Canal Lofts	5601 Canal St.	Houston	77011	Harris	6	Urban				NC	100	50	150	General	1,500,000		Nathan Kelley	48201310500	131	5	17	4	8	0	4	7	176	C	UR					
20082	Connect South Apartment	6440 Hillcroft Ave.	Houston	77074	Harris	6	Urban		x		NC	70	7	77	General	1,500,000		Scott Puffer	48201421300	131	5	17	4	8	0	4	7	176	C	UR					
20077	Lockwood South Apartmer	W. of Lockwood, S. of	Houston	77003	Harris	6	Urban		x		NC	72	8	80	General	1,500,000		Scott Puffer	48201310400	131	5	17	4	8	0	4	7	176	C	UR					
20097	Regency Lofts	3232 Dixie Dr.	Houston	77021	Harris	6	Urban				NC	102	18	120	General	1,500,000		Donna Rickenbacker	48201313200	131	5	17	4	0	8	4	7	176	C	UR					
20205	Ella Grand	2077 S. Gessner Rd.	Houston	77063	Harris	6	Urban				NC	115	30	145	Elderly	1,500,000		Janine Sisak	48201431101	137	5	17	4	0	8	4	0	175	UR						
20128	OST Lofts	5520 Old Spanish Trail	Houston	77023	Harris	6	Urban				NC	106	19	125	General	1,500,000		Donna Rickenbacker	48201311800	131	5	17	4	8	0	4	5	174							
20125	Parkway Meadows	W. Gulf Bank, W. of W	Houston	77088	Harris	6	Urban				NC	64	18	82	General	1,495,797		Ryan Hettig	48201533000	125	5	17	8	8	0	0	7	170							
20116	Dian Street Villas	1433 Dian St.	Houston	77008	Harris	6	Urban		x		NC	96	12	108	General	1,500,000		Jervon Harris	48201511200	138	5	17	4	8	0	4	0	176	C	UR	Terminated; Pending Appeal				
20138	The Ella	1718 W. 26th St.	Houston	77008	Harris	6	Urban				NC	100	80	180	General	1,500,000		Miranda Sprague	48201511100	138	5	17	4	8	0	4	0	176	C		Not Recommended				
Estimated Amount Available		\$15,304,922		Elderly Max \$6,310,219														Total HTCs Requested		20,995,797															
Region 7/Rural																																			
20273	La Grange Springs	NEC of Hwy 77 / CR 21	La Grange	78945	Fayette	7	Rural				NC	64	8	72	General	900,000		Butch Richardson	48149970200	130	5	17	4	0	8	4	0	168	C	UR					
20292	Carver Ridge Apartments	S. of CR 137 / CR 1660	Hutto	78634	Williamson	7	Rural				NC	56	16	72	General	600,000		Justin Zimmerman	48491020809	132	0	17	4	0	8	4	0	165	UR						
20342	The Cottages at Cedar Ridge	County Line Rd / N. Av	Elgin	78621	Travis	7	Rural				NC	40	24	64	Elderly	600,000		Lee Zieben	48453001854	132	0	17	4	8	0	4	0	165							
Estimated Amount Available		\$600,000														Total HTCs Requested		2,100,000																	

AIA[®] Document A101[®] – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 24th day of November in the year 2020

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

DWR Regency 20, LP
6300 West Loop South, Suite 670
Bellaire, Texas 77401
713-560-0068 phone

and the Contractor:

(Name, legal status, address and other information)

Crossroads Housing Development Corporation, a Texas non-profit corporation
P.O. Box 1042
Big Spring, Texas 79721
432-267-2206 phone
432-267-2317 fax

for the following Project:

(Name, location and detailed description)

Regency Lofts
3232 Dixie Drive
Houston, Texas 77021
A 120-unit multifamily apartment complex

The Architect:

(Name, legal status, address and other information)

Mucasey & Associates
4808 Gibson, Suite 200
Houston, Texas 77007
713-521-1233 phone
713-520-1904 fax

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Conditions

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Exhibit "D" – Supplementary Conditions			

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Exhibit "A" – Schedule of Values

Exhibit "B" – Specifications Index

Exhibit "C" – Index of Drawings

Exhibit "D" – Supplementary Conditions

Exhibit "E" – AIA A201-2007 General Conditions

Exhibit "F" – Sales Tax Exemption Certification

Exhibit "G" – Federal Labor Standards Provision, MWSBE and Section 3 Contract Requirements

Exhibit "H" – City of Houston Compliance Forms – MWSBE and Section 3

Exhibit "I" – Quality Management Policies and Procedures

Exhibit "J" – City Workforce Protection Measures

Exhibit "K" – Construction Schedule

Exhibit "L" – Qualifications/Exclusions

Exhibit "M" – Finish Selection Sheet

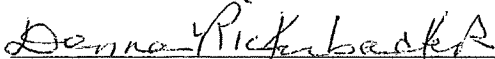
This Agreement entered into as of the day and year first written above.

DWR Regency 20, LP

Crossroads Housing Development Corporation

By: DWR Regency GP, LLC, its General Partner

By: DWR Development Group, LLC, its Manager


OWNER (Signature)

Donna Rickenbacker, Manager
(Printed name and title)

CONTRACTOR (Signature)

Stacy M. Swisher, Executive Director
(Printed name and title)

Init.

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User Notes:

(842283311)

DWR Regency 20, LP

By: DWR Regency GP, LLC, its General Partner

By: DWR Development Group, LLC, its Manager

OWNER (Signature)

Donna Rickenbacker, Manager
(Printed name and title)

Crossroads Housing Development Corporation



CONTRACTOR (Signature)

Stacy M. Swisher, Executive Director
(Printed name and title)

Init.

Chicago Title of Texas, LLC

3700 Buffalo Speedway, Suite 1100, Houston, TX 77098
 Phone: (713)659-1411 | Fax: (713)658-1029

SELLER'S STATEMENT

Settlement Date: December 10, 2020	Escrow Number: CTT18701445
Disbursement Date: December 10, 2020	Escrow Officer: Janet Karr
Borrower: DWR Regency 20, LP, a Texas limited partnership 6300 West Loop South Bellaire, TX 77401	
Seller: Securitas1031, LLC, QI for PM Dixie LLC 11312 Kingsworthy Lane Houston, TX 77024	
Property: 3232 Dixie Dr. Houston, TX 77021 Harris County, Texas Approximately 3.19+/-acres	

	\$	DEBITS	\$	CREDITS
FINANCIAL CONSIDERATION				
Contract sales price				5,500,000.00
PRORATIONS/ADJUSTMENTS				
Real Property Taxes at \$44,440.86		12/11/20-01/01/21 (\$44,440.86 / 366 X 21 days)		2,549.89
Deposits paid to seller for contract extensions			265,000.00	
COMMISSIONS				
Listing Broker commission		Bejjani & Associates-Pierre \$5,500,000.00 @ 3.0000% = \$165,000.00 - Bejjani & Associates-Pierre		165,000.00
TITLE & ESCROW CHARGES				
Owner's policy premium		Chicago Title of Texas, LLC		24,680.00
Escrow Fee		Chicago Title of Texas, LLC		450.00
Guaranty fee		Texas Title Insurance Guaranty Association		0.52
Tax Search		National Tax Net		71.00
Policies to be issued:				
Owners Policy				
Coverage:	Premium:	Version: Owner's Policy of Title Insurance		
\$31,606,012.00	\$94,036.00	(T-1) - 2014		
GOVERNMENT CHARGES				
Recording fees		Chicago Title of Texas, LLC		16.00
eFile Fees		Chicago Title of Texas, LLC		3.20
MISCELLANEOUS CHARGES				
2020 Taxes		Harris County Tax Assessor		42,408.28
2020 Taxes		Greater Southeast MGT. Dist. (Equitax)		2,032.58
1031 Exchange Fee		Securitas1031 LLC		1,980.00
Sales Proceeds		Securitas1031 LLC		5,000,908.31

Subtotals	5,502,549.89	5,502,549.89
TOTALS	5,502,549.89	5,502,549.89

APPROVED and ACCEPTED

Borrower and Seller understand the Closing or Escrow Agent has assembled this information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof. Any real estate agent or lender involved may be furnished a copy of this Statement. Borrower and Seller understand that tax and insurance proration and reserves were based on figures for the preceding year or supplied by others or estimates for current year, and in the event of any change for current year, all necessary adjustments must be made between Borrower and Seller direct. The undersigned hereby authorizes Chicago Title of Texas, LLC to make expenditures and disbursements as shown and approves same for payment. The undersigned also acknowledges receipt of Loan Funds, if applicable, in the amount shown above and a receipt of a copy of this Statement. understand the Closing or Escrow Agent has assembled this information representing the transaction from the best information available from other sources and cannot guarantee the accuracy thereof. The Lender involved may be furnished a copy of this Statement. The undersigned hereby authorizes Chicago Title of Texas, LLC to make expenditures and disbursements as shown and approves same for payment. The undersigned also acknowledges receipt of loan funds in the amount shown above and a receipt of a copy of this Statement.

I have carefully reviewed the Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the Settlement Statement.

SELLER:

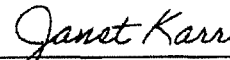
PM Dixie LLC, a Texas limited liability company

By: Securitas1031, LLC, Qualified Intermediary

By: Accepted and Approved:
PM Dixie LLCBy: 

Pierre Bejjani, Manager

To the best of my knowledge, the Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

Chicago Title of Texas, LLC
Settlement Agent

REGENCY LOFTS

AFTER RECORDING, RETURN TO:

Janet Karr (CTT 18701445)
Chicago Title
3700 Buffalo Speedway, Suite 1100
Houston, Texas 77098

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED WITH VENDOR'S LIEN

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

To be effective as of December 10, 2020, PM DIXIE LLC, a Texas limited liability company ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, does hereby GRANT, BARGAIN, SELL and CONVEY to DWR REGENCY 20, LP, a Texas limited liability company ("Grantee"), the following described property (the "Property"):

The real property described on Exhibit A attached hereto and incorporated herein (the "Land"), together with all of Grantor's right, title, and interest in and to any and all of the following related to the Land: (a) rights of way, streets, roads, alleys, and/or avenues, open or proposed, abutting the Land, (b) riparian and water rights, (c) air rights, (d) the nonexclusive right to uses, servitudes, licenses, easements, tenements, hereditaments and appurtenances now or hereafter belonging to or benefiting the Land (subject to Grantor's interest in same), (e) oil, gas and other minerals lying on or under the Land, (f) buildings, improvements and fixtures located on or under the Land, and (g) licenses, warranties, and permits.

This conveyance of the Property is made AS IS, WHERE IS, WITH ALL FAULTS, subject to general real estate taxes on the Property for the current year and subsequent years, and the instruments listed on Exhibit B, attached hereto and made a part hereof (collectively, the "Permitted Exceptions").

RP-2020-608863

At the request of Grantee, a portion of the consideration paid for the Property was advanced by Zions Bancorporation, N.A. dba Amegy Bank ("**Lender**"), the receipt of which is hereby acknowledged, and as evidence of said consideration Grantee has executed and delivered a promissory note (the "**Note**") dated of approximately even date herewith, payable to the order of Lender as therein provided. To secure the repayment of the Note, Grantor does hereby expressly retain a Vendor's Lien and Superior Title upon and against the Property, until the amount of such proceeds is fully paid according to the face, tenor, effect, and reading of the Note, whereupon this Deed shall become absolute. Said Vendor's Lien and Superior Title herein retained are hereby transferred, assigned, sold, and conveyed to Lender, its successors and assigns, the payee named in the Note, without recourse or warranty.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee and its successors and assigns, forever, and Grantor does hereby bind itself and its successors to forever warrant and defend all and singular the Property unto Grantee and its successors and assigns against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise; subject, however to the Permitted Exceptions.

[Executed on the following page]

IN WITNESS WHEREOF, Grantor executes this Deed on the date in the acknowledgement set forth below, to be effective as of the date first set forth above.

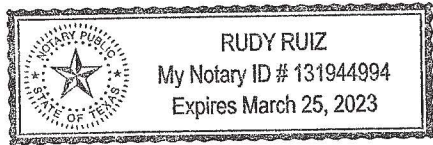
GRANTOR: **PM DIXIE LLC,**
a Texas limited liability company,


By: 
Pierre Bejjani, Manager

STATE OF Texas §
 §
COUNTY OF Harris §

This instrument was acknowledged before me on the 9th day of December 2020, by Pierre Bejjani, Manager of **PM DIXIE LLC**, a Texas limited liability company, on behalf of said limited liability company.

[SEAL]




Notary Public, State of Texas

THE ADDRESS OF GRANTOR IS:
11312 Kingsworthy Lane
Houston, Texas 77024

THE ADDRESS OF GRANTEE IS:
6300 West Loop South, Ste 670
Bellaire, Texas 77401

RP-2020-608863

EXHIBIT A

DESCRIPTION OF LAND

All of Unrestricted Reserve "A", Block One (1), of Regency Lofts, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code No. 693113, of the Map Records of Harris County, Texas.

RP-2020-608863

EXHIBIT B

PERMITTED EXCEPTIONS

1. The following restrictive covenants of record itemized below:
 - a. Those recorded under Film Code No. 693113, Map Records, Harris County, Texas.
2. Electric distribution facilities easement(s) and appurtenances as granted in a document:
 - a. Granted to: Houston Lighting and Power Company
 - b. Recording Date: December 20, 1982
 - c. Recording No: under Harris County Clerk's File Number(s) H744993 and as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Map County, Texas.
 - d. Affects: 10 feet wide and traversing a portion of the subject property together with any unobstructed aerial easement(s) and being more particularly located and defined therein.
3. Interest in and to all coal, lignite, oil, gas and other minerals, and all rights incident thereto, contained in instrument dated August 12, 1982, recorded August 16, 1982, under Harris County Clerk's File Number(s) H574876.
4. Access to State Highway No, 288 was denied as set forth in instrument recorded under Harris County Clerk's File Number(s) D303091.
5. Terms, conditions and stipulations contained in that certain Notice of Storm Water Quality Requirements, as set forth by instrument filed for record under Clerk's File No. RP-2020-437939, Official Public Records, Harris County, Texas.
6. Building set back line twenty-five (25) feet in width along the west property line, as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.
7. Building set back line ten (10) feet in width along the south, north and northerly east property line, as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.
8. A visibility triangle easement fifteen (15) feet by fifteen (15) feet wide located in the most northerly northeast property corner as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Map County, Texas.

RP-2020-608863
Pages 6
12/11/2020 09:52 AM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$34.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

RP-2020-608863

When recorded, return to:

THE CITY OF HOUSTON
P. O. Box 1562
Houston, TX 77251-1562
Attention: Director, Housing and Community Development Department

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED OF TRUST, SECURITY AGREEMENT AND FINANCING STATEMENT

From

DWR REGENCY 20, LP,
a Texas limited partnership
as Grantor

to

Tom McCasland,
as Trustee

for the benefit of

WILLIAM A. LAWSON INSTITUTE FOR PEACE AND PROSPERITY,
a Texas non-profit corporation
as Beneficiary

RP-2020-608867

Signature Page
Deed of Trust, Security Agreement and Financing Statement

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, Security Agreement and Financing Statement on the date set forth in the acknowledgments below **but to be effective as of December 10, 2020.**

DWR REGENCY 20, LP,
a Texas limited partnership

By: DWR Regency GP, LLC,
a Texas limited liability company,
its general partner

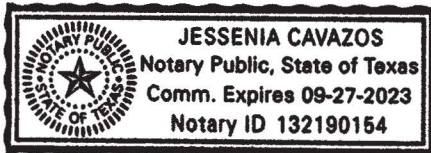
By: DWR Development Group, LLC,
a Texas limited liability company,
its manager

By: *Donna W. Rickenbacker*
Name: Donna W. Rickenbacker
Title: Manager

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this 7th day of December, 2020 by Donna W. Rickenbacker, the manager of DWR Development Group, LLC, a Texas limited liability company, the manager of DWR Regency GP, LLC, a Texas limited liability company, the general partner of DWR Regency GP, LLC, a Texas limited partnership, on behalf of said limited partnership.



Jessenia Cavazos
NOTARY PUBLIC - THE STATE OF TEXAS
Jessenia Cavazos
Printed Name of Notary

My commission expires: 09-27-2023

ATTACHMENTS:
EXHIBIT "A" Land
EXHIBIT "B" Permitted Encumbrances

RP-2020-608867

**EXHIBIT A
PROPERTY DESCRIPTION**

All of Unrestricted Reserve "A", Block One (1), of Regency Lofts, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code No. 693113, of the Map Records of Harris County, Texas.

RP-2020-608867

**EXHIBIT B
PERMITTED ENCUMBRANCES**

1. City of Houston Restrictive Covenants
2. Zions Bancorporation, N.A., dba Amegy Bank Deed of Trust
3. Amegy County UCC-1
4. City of Houston Deed of Trust
5. City of Houston UCC-1
6. City of Houston UCC-3
7. City of Houston Collateral Assignment of Note and Liens
8. City of Houston Intercreditor Agreement
9. City of Houston Declaration of Subordination
10. The following restrictive covenants of record: Those recorded under Film Code No. 693113, Map Records, Harris County, Texas.
11. Electric distribution facilities easement(s) and appurtenances as granted in a document to Houston Lighting and Power Company, recorded December 20, 1982, under Harris County Clerk's File Number(s) H744993 and shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Map County, Texas. Affects 10 feet wide and traversing a portion of the subject property together with any unobstructed areal easement(s) and being more particularly located and defined therein.
12. Interest in and to all coal, lignite, oil, gas and other minerals, and all rights incident thereto, contained in instrument dated August 12, 1982, recorded August 16, 1982, under Harris County Clerk's File Number(s) H574876.
13. Subject property abuts State Highway No. 288, which is a controlled access highway. Access to State Highway No. 288 was defined as set forth in instrument recorded under Harris County Clerk's File Number(s) D303091.
14. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey prepared by Sean Conley, R.P.L.S. No. 6739, last revised October 27, 2020, and designated as Job No. 6728-00:
 - a. Fences do not follow the boundary lines, together with the rights of others in and to the use of the land lying between the fence and said boundary line.
 - b. Encroachment of asphalt into adjoining property.
 - c. Power poles, electric meter, guy wire, and sanitary man hole as shown thereon, together with the rights of utilities and servicing companies in and to the access, use, maintenance and removal of same.
15. Terms, conditions and stipulations contained in that certain Notice of Storm Water Quality

Requirements, as set forth by instrument filed for record under Clerk's File No. RP-2020-47939, Official Public Records Harris County, Texas.

16. Building set back line twenty-five (25) feet in width along the west property line, as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.
17. Building set back line ten (10) feet in width along the south, north and northerly east property line, as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.
18. A visibility triangle easement fifteen (15) feet by fifteen (15) feet wide located in the most northerly northeast property corner as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Map County, Texas.
19. Drainage easement fifteen (15) feet wide on each side of the center line of any and all natural drainage courses as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.

RP-2020-608867

RP-2020-608867
Pages 22
12/11/2020 09:52 AM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$98.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

RP-2020-608867

Prepared by, and after recording
return to:

Wayne Yaffee, Esquire
Greenberg Traurig LLP
1000 Louisiana Street, Suite 1700
Houston, Texas 77002

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST,
ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT AND FIXTURE FILING
(TEXAS)

RP-2020-608865

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RP-2020-608865

**MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST,
ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

THIS MULTIFAMILY CONSTRUCTION AND PERMANENT DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "**Instrument**") is dated as of the 10th day of December, 2020, by DWR REGENCY 20, LP, a limited partnership organized and existing under the laws of the State of Texas, ("**Borrower**"), whose address is 6300 West Loop South, Suite 670, Bellaire, Texas 77401, File No. 0803751002, Attention: Donna W. Rickenbacker, as trustor, to George M. Marshall, as trustee, ("**Trustee**"), for the benefit of ZIONS BANCORPORATION, N.A. DBA AMEGY BANK, whose address is 1717 W. Loop South, Houston, Texas 77027, as beneficiary ("**Lender**").

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in Houston, Harris County, State of Texas, and described in Exhibit A attached to this Instrument, subject, however, to the Permitted Exceptions (hereinafter defined).

TO SECURE TO LENDER (1) the repayment of the Indebtedness evidenced by Borrower's Promissory Note ("Note") payable to Lender, dated as of the date of this Instrument, and maturing no later than twenty and one-half (20.5) years after the date of this Instrument, in the principal amount of \$16,021,000.00, and all renewals, extensions and modifications of the Note, and (2) the performance of the covenants and agreements of Borrower contained in the Loan Documents.

Borrower warrants and represents that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for those permitted encumbrances shown on Exhibit B attached hereto (collectively, the "**Permitted Exceptions**"). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to the Permitted Exceptions.

Borrower and Lender covenant and agree as follows:

1. DEFINITIONS.

The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) "**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

RP-2020-608865

DATED AND EFFECTIVE AS OF the date first set forth above.

DWR REGENCY 20, LP, a Texas limited partnership

By: DWR Regency GP, LLC, a Texas limited liability company, its general partner

By: DWR Development Group, LLC, a Texas limited liability company, its manager

By: Donna Rickenbacker
Donna W. Rickenbacker, manager

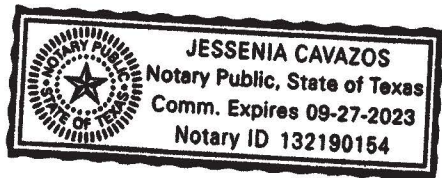
THE STATE OF TEXAS

§
§
§

COUNTY OF Harris

BEFORE ME, the undersigned authority, on this day personally appeared Donna W. Rickenbacker, manager of DWR DEVELOPMENT GROUP, LLC, a Texas limited liability company, on behalf of said limited liability company, the manager of DWR REGENCY GP, LLC, a Texas limited liability company, on behalf of said limited liability company, general partner of DWR REGENCY 20, LP, a Texas limited partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 24th day of December, 2020.



[Signature]
NOTARY PUBLIC in and for The State of Texas

RP-2020-608865

KEY PRINCIPALS

Name: Donna W. Rickenbacker
6300 West Loop South
Suite 670
Bellaire, Texas 77401

James Rickenbacker
6300 West Loop South
Suite 670
Bellaire, Texas 77401

RP-2020-608865

EXHIBIT "A"

All of Unrestricted Reserve "A", Block One (1), of Regency Lofts, a subdivision in Harris County, Texas, according to the map or plat thereof recorded under Film Code No. 693113, of the Map Records of Harris County, Texas.

RP-2020-608865

EXHIBIT B

(PERMITTED EXCEPTIONS)

This conveyance is made and accepted subject to the following Permitted Encumbrances:

1. The following restrictive covenants of record itemized below:

Those recorded under Film Code No. 693113, Map Records, Harris County, Texas and those recorded on or about the date hereof with the Harris County Clerk, Official Public Records, Harris County, Texas (City of Houston Restrictive Covenants).

2. Shortages in area.
3. Standby fees, taxes and assessments by any taxing authority for the year 2021, and subsequent years.
4. The following matters and all terms of the documents creating or offering evidence of the matters:

- a. Electric distribution facilities easement(s) and appurtenances as granted in a document:

Granted to: Houston Lighting and Power Company
Recording Date: December 20, 1982
Recording No: under Harris County Clerk's File Number(s) H744993 and as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Map County, Texas.
Affects: 10 feet wide and traversing a portion of the subject property together with any unobstructed aerial easement(s) and being more particularly located and defined therein.

Reference is hereby made to said document(s) for full particulars.

- b. Interest in and to all coal, lignite, oil, gas and other minerals, and all rights incident thereto, contained in instrument dated August 12, 1982, recorded August 16, 1982, under Harris County Clerk's File Number(s) H574876. Reference to which instrument is here made for particulars. No further search of title has been made as to the interest(s) evidenced by this instrument, and the Company makes no representation as to the ownership or holder of such interest(s).

- c.

Terms, conditions and stipulations contained in that certain Notice of Storm Water Quality Requirements, as set forth by instrument filed for record under Clerk's File No. RP-2020-437939, Official Public Records, Harris County, Texas.

d.

Building set back line twenty-five (25) feet in width along the west property line, as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.

e.

Building set back line ten (10) feet in width along the south, north and northerly east property line, as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Harris County, Texas.

f.

A visibility triangle easement fifteen (15) feet by fifteen (15) feet wide located in the most northerly northeast property corner as shown by the recorded plat and dedication set out in Film Code No. 693113, Map Records, Map County, Texas.

RP-2020-608865

RP-2020-608865
Pages 73
12/11/2020 09:52 AM
e-Filed & e-Recorded in the
Official Public Records of
HARRIS COUNTY
TENESHIA HUDSPETH
COUNTY CLERK
Fees \$302.00

RECORDERS MEMORANDUM

This instrument was received and recorded electronically and any blackouts, additions or changes were present at the time the instrument was filed and recorded.

Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas.



Teneshia Hudspeth
COUNTY CLERK
HARRIS COUNTY, TEXAS

RP-2020-608865

20100

Southlawn at Milby



December 18, 2020

Ms. Alena Morgan
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Request for Waiver of Penalties under 10TAC §11.9(f)

Dear Ms. Morgan:

I am writing on behalf 2020 Southlawn 90, LP, the Applicant for Application #20100 Southlawn at Milby. The proposed development is located in Urban Region 6 within the Houston City Limits. The Applicant is seeking a waiver of any penalties in the 2021 Tax Credit round related to a failure to meet the Readiness to Proceed closing deadline of November 30, 2020. Numerous circumstances beyond the Applicant's control forced a slowdown in the closing process.

The development received a Resolutions of Support from the City of Houston as well as a recommendation for CDBG-DR funding as administered by the City of Houston. CDBG-DR funding is an essential component of the financial plan for Southlawn at Milby. The City of Houston's approval of CDBG-DR funding was delayed due to several factors that the Applicant could not have foreseen when it submitted its application to TDHCA on March 1, 2020.

First, in late March of this year Covid-19 precautions slowed the transaction of business overall, while placing additional pressures and responsibilities on governmental entities such as the City of Houston's Neighborhood Housing division which oversees the administration of the CDBG-DR funding and its subsequent contracts. As a result, a commitment of funds from the City of Houston was not forthcoming until June 22nd. The Applicant began to work in earnest towards a September closing.

Second, the Applicant was not informed of the need to obtain Part 58 Environmental Clearance prior to release of CDBG-DR funds until September 18th. Although the completion of a Part 58 Environmental report is not difficult, it is a lengthy process requiring the approval of multiple governmental agencies including the State Historic Preservation Office and other organizations, each of which is allowed a 30-day timeframe to respond. Further, the Applicant was advised by the City of Houston that only the City could initiate the clearance with the cooperation of the General Land Office, leaving the Applicant helpless to affect any forward momentum on this vital piece of documentation. The documentation was submitted for approval/clearance on October 9.

Third, and most damaging, a Court injunction by the Texas General Land Office halted all Part 58 clearances for approximately 90 days, resulting in an additional delay in processing. The City of Houston resumed administration of funds this month, but the applications are still awaiting their Part 58 approvals. The Applicant anticipates a February closing.

These delays were not only unforeseeable, but they were also clearly beyond the control of the Applicant in each case. We hope that you will find these circumstances worthy of a waiver of penalty under 10 TAC §11.9(f).

I appreciate your time and consideration,

A handwritten signature in black ink, appearing to read "Sarah Andre", with a long horizontal stroke extending to the right.

Sarah Andre
Consultant to the Project

From: [Sarah Andre](#)
To: [Alena Morgan](#)
Cc: [Harris Block](#); [Mark Rogers](#)
Subject: Request for Waiver under 10TAC Sec11.9(f)
Date: Friday, December 18, 2020 2:13:46 PM
Attachments: [EUR RTP Penalty Waiver Request Letter HB.pdf](#)

Alena - Attached is a waiver request for a Readiness to Proceed Transaction, Application 20100, Southlawn at Milby.

Please acknowledge receipt.

Sarah Andre
Structure Development
1301 Chicon, Suite 101
Austin, TX 78702
512/698-3369

20140

Richmond Senior Village

Richmond Senior Village, Ltd.
6517 Mapleridge St
Houston, TX 77081

December 21, 2020

Texas Department of Housing and Community Affairs
Attn: Alena Morgan
221 East 11th Street
Austin, Texas 78701

Re: HTC #20141, Richmond Senior Village, Houston, Texas

As the Department is aware, Richmond Senior Village, Ltd. (the “Partnership”), Developer of HTC Application #20141 in Houston, TX, was unable to meet the closing requirement outlined in 10 TAC §11.9(c)(8), related to Readiness to Proceed (“Readiness”). Pursuant to this paragraph, “failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.”

Analysis of 10 TAC §11.9(f)

10 TAC §11.9(f) gives the Department the ability to penalize Applicants for failing to meet certain deadlines, among them Readiness. This subsection goes on to state that for “non-statutory deadlines, an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated.” Readiness is not a statutory deadline, and is therefore eligible for this penalty exception.

History of Performance

Along with its various partners, Brownstone Affordable Housing, Ltd (“BAH”), Member of the Partnership’s General Partner, has a demonstrated history of closing Readiness transactions in a timely manner, including in this current cycle.

App #	Development Name	Capital Stack	City	RTP Deadline	Closing Date
18138	Lancaster Senior Village	HTC, Conventional Debt	Houston	10/31/2018	10/30/2018
19064	Jackson Apartments	HTC, Conventional Debt	McAllen	11/29/2019	11/26/2019
19070	South Rice Apartments	HTC, Conventional Debt, City CDBG Funds	Houston	11/29/2019	12/20/2019
20134	Hibiscus Village	HTC, Conventional Debt	McAllen	11/30/2020	11/20/2020

In fact, since the inception of this scoring item, BAH has only missed this deadline once, and it was by a mere three weeks. In that case, the City of Houston had preemptively notified the Department of delays with its process of awarding CDBG Disaster Recovery funds, of which South Rice Apartments was a recipient. South Rice Apartments was not assessed a penalty by the TDHCA Board, because the circumstances causing the delay were clearly outside the control of the Applicant.

Circumstances Beyond the Control of the Applicant

The capital stack for Richmond Senior Village includes both Tax Credits from TDHCA and CDBG Disaster Recovery funds from the City of Houston. The Partnership worked diligently on this transaction in preparation of the Readiness deadline, as outlined in the chart below.

Date	Action
03/15/20	Full Architectural Drawings started
04/01/20	Civil Engineer engaged
04/24/20	Geotechnical Report ordered
05/19/20	Geotechnical Report Issued
07/15/20	Platting Process started
07/20/20	Plans for Site Work Permits submitted to City
08/15-31/20	Solicited bids from Lenders and Syndicators
09/10/2020	Executed LOI with Lender and Syndicator
08/05/20	Full Plans & Specs complete
09/14/20	Construction Bid Process started
10/01/20	Plat Approved & Ready for Recordation
10/01/20	Construction Bids complete
10/05/20	Construction Contract ready for execution

The Partnership submitted a funding Application to the City of Houston that meets all the requirement of the NOFA under which it applied. It wasn't until close of business on October 12th that a denial letter was issued. Incidentally, the Partnership had just executed its Carryover Allocation Agreement with TDHCA hours earlier. By that point in time, the Partnership had expended nearly half a million dollars in preparation for a late November closing. The Partnership is in the process of appealing this denial, and believes it has the political support necessary to ultimately receive an award of City CDBG Funds.

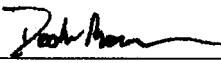
Should this appeal be granted, the Partnership will work as expeditiously as possible with the City staff on due diligence collection and the environmental clearance process. As listed in the chart above, the plans are complete, the construction contract is ready to be executed, and the plat is ready to be recorded.

The circumstances leading up to the City's denial were clearly beyond the reasonable control of the Partnership, and could not have been reasonably anticipated. Everything that was within the control of the Partnership was complete and ready to have met the Readiness deadline. Furthermore, the fact that the City of Houston didn't issue a denial until after the Partnership had executed its Carryover Allocation Agreement with TDCHA meant that returning the credits would subject the Partnership to this same penalty provision, pursuant to 11.901(15), related to Unused Credit or Penalty Fee. Given these facts, the

Partnership respectfully requests that the Board grant the exception under 10 TAC 11.9(f), and not assess a penalty against members of the Partnership.

Richmond Senior Village, Ltd.

By: Richmond Senior Village GP, LLC, its general partner

By: 

Doak D. Brown, Manager

20179

Avanti West

From: [Bast, Cynthia L.](#)
To: [Bobby Wilkinson](#); [Marni Holloway](#); [Alena Morgan](#)
Subject: Readiness to Proceed - Avanti West
Date: Thursday, December 17, 2020 10:40:56 PM
Attachments: [91012895_1.pdf](#)

Please see attached and confirm receipt. Thank you.

Take good care of yourself,

Cynthia Bast

Chair, Affordable Housing and Community Development Section

Locke Lord LLP

600 Congress Avenue

Suite 2200

Austin, Texas 78701

T: 512-305-4707

F: 512-391-4707

cbast@lockelord.com

www.lockelord.com

Locke Lord has helpful COVID-19 Resources here:

<https://www.lockelord.com/covid19resourcecenter>



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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

December 17, 2020

Via Email

Mr. Bobby Wilkinson
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Readiness to Proceed – Avanti West
TDHCA No. 20179

Dear Bobby:

We represent Avanti West, LP (the “**Applicant**”), which received a commitment of 9% Housing Tax Credits¹ for the Development referenced above. The Applicant received points under Section 11.9(c)(8) of the QAP regarding "readiness to proceed." The rule states:

Failure to close all financing and provide evidence of an executed construction contract by the November deadline will result in penalty under 10 TAC §11.9(f), as determined solely by the Board.

The Applicant closed the transaction at the end of November, with a signed construction contract dated as of November 26, 2020. Documents for the financing were dated effective as of November 30, 2020 and were placed in escrow with the title company on or before that date. Copies of these documents have been provided to TDHCA. However, due to circumstances that were not reasonably anticipated by the Applicant and not within the Applicant's control, funding of the transaction did not occur until December 2, 2020.

The circumstances leading to the 2 business day delay for funding related to certain title and real estate issues requiring the seller's participation. The seller was required to review, negotiate, and sign the following:

¹ Capitalized terms used but not defined in this letter shall have the meanings given them in the 2020 QAP.

- 3 Easements with the City of Edinburg
- 1 Emergency Access Agreement
- 1 Development Agreement
- 2 Lien Releases from the bank
- Deed, Seller Statement along with additional closing documents

The Applicant was working with the seller to complete these tasks, communicating with the seller regularly until October 29, 2020. Then, the seller stopped responding to communications, despite daily entreaties from the Applicant. Finally, the Applicant heard from the seller on November 16, 2020 and learned that the seller and his wife had been ill with COVID-19. Further, the seller advised that he did not have a negative COVID-19 test result until the week of November 23, 2020.

The seller's illness delayed the Applicant's ability to obtain and record the various real estate documents necessary for closing. This is why the financing did not fund until December 2, 2020.

Given the body of evidence, it is clear that the Applicant was well-positioned to close the transaction by November 30, 2020. The financing parties and the documents were ready and waiting for completion of certain items requiring the seller's participation. The Applicant could not have controlled the outcome any differently. To the extent a penalty may be assessed against the Applicant or its Affiliates under Section 11.9(f)(3) of the 2021 QAP, we respectfully request that the Board waive such penalty.

Sincerely,



Cynthia L. Bast

cc: Applicant

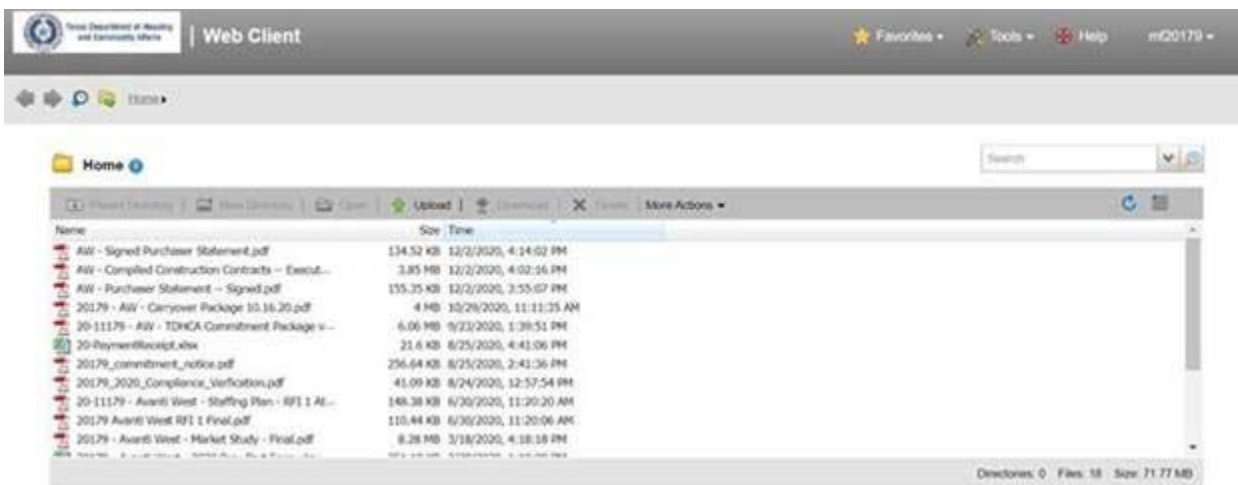
Alena Morgan

To: Michael Tamez
Subject: RE: 20179 Avanti West Evidence of Closing

From: Alyssa Flores <aflores@madhousedevlopment.net>
Sent: Thursday, December 03, 2020 2:18 PM
To: Ben Sheppard <ben.sheppard@tdhca.state.tx.us>
Cc: Consultant <Consultant@madhousedevlopment.net>; Henry Flores <hflores@madhousedevlopment.net>
Subject: 20179 Avanti West Evidence of Closing

Ben – Given the file sizes, we uploaded the final settlement statement and executed construction contracts for Application #20179. We are **not** foregoing the five points. Please note that the settlement statement is dated 12/2/20. Given the board cannot waive the rule, we are asking the board to forego a penalty given the seller and his wife contracted COVID-19 and were unreachable for 2-weeks in November leading up to the 11/30/2020 deadline. This was definitely an unforeseen circumstance that was out of our control and had a direct impact on the delay. Additional documentation will be submitted to TDHCA and addressed to the Executive Director.

Please let me know if you need anything else or have any questions.



Thanks!

Alyssa A. Flores

Development Associate
Madhouse Development Services, Inc.
8500 Shoal Creek Blvd., Bldg. 4, STE 208
Austin, TX 78757
P (512) 982-1389
F (512) 900-2860
aflores@madhousedevlopment.net

20204

Heritage Senior Residence

HERITAGE SENIOR RESIDENCES, L.P.

December 30, 2020

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

Re: Heritage Senior Residences / TDHCA #20204 – Readiness to Proceed

Dear Madam/Sir:

I respectfully request a Penalty Waiver of the Readiness to Proceed deadline pursuant to 10 TAC §11.9(c)(8) of the 2020 Qualified Allocation Plan for the above referenced development. The COVID-19 pandemic, as well as its associated precautionary measures, have had a significant impact on daily life and the development industry as a whole. Many government agencies and financial institutions had complete stoppages early on and most have transitioned to a full-time remote-work environment. As a result, the development has experienced extensive delays that are beyond our control.

While we worked, to the best of our ability, toward closing on the construction financing in November 2020, we are currently projecting to close in February 2021 due to the following factors that inhibited our ability to meet the Readiness to Proceed closing deadline:

- **Delays related to placing the Housing Tax Credit equity:** The only investor that has provided an equity bid on the HTC that makes the development feasible, Bank of America, is unable to close the transaction until the 1st quarter of 2021 due to their constrained capacity and bandwidth due to COVID-19 and the related remote work environment. See Exhibit A for support.
- **Delays related to HUD environmental clearance:** The development was awarded a CDBG-DR loan from the City of Houston (the “City”). The required environmental clearance needed for the City’s CDBG-DR program loan has taken longer than anticipated due to COVID-19. Specifically, the Texas Historical Commission took 37 days to respond to the City, 9 days longer than originally anticipated, and the Texas Parks and Wildlife Department took 41 days to respond to the City, 13 days longer than anticipated. The City submitted the environmental clearance approval to GLO on November 5 and GLO comments were received 20 days later. The City submitted their approval of the comments to GLO on December 9 and the 30-day notification period commenced on December 30. Due to the above delays, we do not expect to receive environmental clearance approval until late January at the earliest. See Exhibit B for support.
- **Delays related to the subordinate debt:** The CDBG-DR the development received from the City of Houston is taking longer to close than originally anticipated due to COVID-19. Although the LOI with the City was signed on July 30th and the required deposit paid to get the development in the queue for closing, the first draft of the City’s loan documents was not sent out until December 8th. In order to close, these documents must be negotiated by the borrower, lender, and investor, and once finalized the documents must be approved by City Council. Based on the current timeline it is not expected that these documents will be final and approved by City Council until January 20, 2021. Once approved it will then take approximately two weeks to close, setting the closing date at the beginning of February at the earliest. See Exhibit C for support.

HERITAGE SENIOR RESIDENCES, L.P.

Due to the above unforeseen delays that are outside of our control, I respectfully request a Penalty Waiver of the Readiness to Proceed deadline pursuant to 10 TAC §11.9(c)(8) of the 2020 Qualified Allocation Plan.

Please do not hesitate to contact Greg Griffith at 305-357-4737 with any questions or comments. Your understanding and consideration is very much appreciated.

Sincerely,

Stanley D. Cohen
Principal of Heritage Senior Residences, L.P.

EXHIBIT A

SUPPORT FOR DELAYS RELATED TO PLACING EQUITY

- 1) Draft Equity LOI received from on 9/23/20. Draft assumed a closing date of 1/15/21 due to Bank of America's inability to close in 2020.
- 2) Email from Bank of America confirming their inability to close in 2020.

Community Development Banking
401 E Las Olas Blvd.
Fort Lauderdale, FL 33301

Jason Kaye
Senior Vice President
P 954-765-2141
Jason.Kaye@bofa.com

September 23, 2020

Greg Griffith
c/o Atlantic Pacific Communities
2950 S.W. 27th Avenue, Suite 200
Miami, Florida 33133

Re: **Heritage Senior Residences Draft Equity LOI**

Dear Mr. Griffith:

This letter expresses the interest of Bank of America, N.A., and, or, its affiliates (“Investor”) in making an equity investment in a partnership for purposes of developing and owning a low-income senior housing project (the “Project”). This letter is intended to describe the terms and conditions of Investor’s proposed equity investment.

1. Project.

The Project will consist of the new construction of 135 units, including 94 affordable housing units for low income seniors (55+) and 41 market rate units contained in one five-story residential building located in Houston, Texas (the "Property"). The unit mix will be as follows:

Descripti	#BRs	LIHTC Unit?	Unit Class- ification	AMI (the drop-down is from cells F5-K5 - see comment)	No. Units
1 BR 30%	1	Y	LIHTC Restr	30%	23
1 BR 50%	1	Y	LIHTC Restr	50%	11
1 BR 60%	1	Y	LIHTC Restr	60%	24
1 BR 80%	1	Y	LIHTC Restr	80%	17
1 BR MKT	1	N	Market		33
2 BR 30%	2	Y	LIHTC Restr	30%	6
2 BR 50%	2	Y	LIHTC Restr	50%	3
2 BR 60%	2	Y	LIHTC Restr	60%	5
2 BR 80%	2	Y	LIHTC Restr	80%	5
2 BR MKT	2	N	Market		8

2. Tax Credits.

The Project has received a preliminary reservation in 2020 of 9% federal low-income housing tax credits (the “Projected Federal Credits”) in the amount of \$1,437,311 per

annum from the Texas Department of Housing and Community Affairs (the “Credit Agency”).

3. Partnership.

The Project will be owned and operated by Heritage Senior Residences, L.P., a Texas Limited Partnership (the “Partnership”), with Heritage Senior Residences GP, LLC, a Texas limited liability company as General Partner (“General Partner”), and Bank of America, N.A., a national banking association as Investor Limited Partner and Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, an affiliate of Investor as Special Limited Partner. General Partner, Investor, and Special Limited Partner will enter into a Partnership Agreement (the “Partnership Agreement”). General Partner will own a 0.01% interest in the Partnership; Investor will own a 99.99% interest in the Partnership as Investor Limited Partner; and Special Limited Partner will own a 0.00% interest (the “Percentage Interests”).

4. Project Financing.

General Partner contemplates that the Partnership will obtain the loans set forth below (the “Loans”):

- A. Construction Loan. A construction loan in an estimated amount of \$17,501,366 and with a term of 30 month(s) (the “Construction Loan”) will be provided by Bank of America on terms to be approved by Investor.
- B. Permanent Loans. The following permanent loans (the “Permanent Loans”) are expected to be made to the Partnership:

Loan type	Loan Amount	Interest rate	Loan Term	Amortization Term
<u>First Mortgage Loan (BoFA)</u>	\$9,400,000	4.48%	18 years	35 years
Harris County CDBG-DR	\$911,700,000	100%	30 years	30 years

The terms and conditions of each of the Loans and any other loan to the Partnership will be subject to Investor’s approval. Such loans will (i) expressly permit the admission of Investor into the Partnership and the potential transfers of the partnership interests by Investor and Special Limited Partner without consent of the maker of the loan provided that such transfers are permitted under the Partnership Agreement, and (ii) will provide Investor with notices of default and cure rights acceptable to Investor. All Permanent Loans will be non-recourse.

5. Other Parties.

- A. Developer. Heritage Senior Residences, LLC (75%), a Texas limited liability company.

Heritage Senior Residences

- B. Guarantor. Stanley D. Cohen Revocable Living Trust and Stanley D. Cohen personally. Liquidity and Net Worth Covenants: \$5 million Liquidity and \$15 million Net Worth.
- C. Property Manager. TBD, a Texas limited liability company. The Property Manager is not affiliated with Developer, Guarantor, General Contractor, or Managing General Partner.
- D. Compliance Monitor. Atlantic Pacific Community Management, LLC.
- E. General Contractor. Atlantic Pacific Community Builders, LLC. The General Contractor is affiliated with Developer, Guarantor, and Managing General Partner. The General Contractor will provide a Guaranteed Maximum Price Contract with 100% Payment and Performance bonding or Letter of Credit equal to 15% of the construction contract in lieu of bonding.

The qualifications and financial condition of each of the foregoing parties must be acceptable to Investor.

6. Capital Contributions.

Investor will make a total Capital Contribution equal to \$0.96 for each \$1.00 of Federal Tax Credits to which it will be entitled as a limited partner. Based on the Projected Credits for the Partnership this would amount to a total Capital Contribution of \$13,796,806 (the “Total Capital Contribution”). The Total Capital Contribution will be paid as follows assuming a January 15, 2021 closing:

Milestone	Conditions to be satisfied prior to payment	% Equity	\$ Equity
<u>Initial Capital Contribution</u>	(i) closing of the Partnership (ii) closing and initial funding, to the extent contemplated by the closing draw, of all construction financing for the Project (iii) receipt of commitments for all permanent financing on the Project with the interest rate fixed for at least 15 years (iv) evidence of either acquisition of, or a long-term leasehold interest in, the land for the Project (v) evidence the Partnership has received an allocation from the Credit Agency of 9% credits in an amount equal to the Projected Federal Credits (vi) receipt by the Investor of a tax opinion prepared by special tax counsel for the Partnership in a form which is acceptable to the Investor (vi) satisfactory completion of Investor’s due diligence	15%	\$2,069,520.90

Heritage Senior Residences

<p><u>Completion Capital Contribution</u></p>	<p>(i) the Bank has received the Bank’s Construction Consultant’s report evidencing construction completion of the Project sufficient for all residential units to be “placed in service” within the meaning of section 42 of the Code. (ii) the owner’s title policy has been amended to remove all mechanics lien exceptions</p> <p>This contribution will occur no earlier than 8/01/2022.</p>	<p>15%</p>	<p>\$2,069,520.90</p>
<p><u>Conversion and Stabilization Capital Contribution</u></p>	<p>(i) the Project then has achieved at least an average over a period of three consecutive calendar months of a minimum of 1.15 to 1 debt service coverage on the Permanent Loan (which period must include the last day of the most recent calendar month) (ii) the Project is then at least 90% physically occupied (iii) all tax credit units have been leased to qualified tenants at least one time (iv) all Permanent Loans have closed and funded, or will close and fund concurrent with this Conversion and Stabilization Capital Contribution (v) permanent certificates of occupancy for each building in the Project. (vi) all reserves have funded or will fund concurrent with this payment (vii) receipt of an Accountant reviewed draft of the cost certification.</p> <p>This contribution will occur no earlier than 05/01/2023.</p>	<p>65%</p>	<p>\$8,967,923.90</p>
<p><u>Final Capital Contribution</u> (The balance of the unpaid Total Capital Contribution)</p>	<p>(i) the Credit Agency has issued a Form 8609 for each building. (ii) a final cost certification reviewed by a qualified accountant has been received in a form acceptable to Investor. (iii) a copy of the recorded Extended Use Agreement has been received. (iv) a copy of the compliance audit of the initial tenant files has been received. (v) calculations of final adjusters have been prepared and agreed to.</p> <p>This contribution will occur no earlier than 08/01/2023.</p>	<p>5%</p>	<p>\$689,840.30</p>

7. General Partner and Guarantor Obligations.

- A. Completion and Development Deficit Guaranty. General Partner and Guarantor will guarantee lien-free completion of the Project in a good and workmanlike manner substantially in accordance with plans and specifications as approved by Investor on or before August 1, 2022 (the “Completion Date”). General Partner and Guarantor will guaranty payment of all development costs, including all costs

of achieving such lien-free completion, including all soft costs and construction period interest. If necessary, the General Partners will defer developer fee to cover cost overruns provided that the amount of the deferred fee as increased is projected to be payable from the Project's Operating cash flow no later than the 13th year after completion. Further, under this guaranty, Managing General Partner and Guarantor will guaranty payment of all operating costs through the later of the date (i) the Project has achieved 90% occupancy for a period of three consecutive calendar months, (ii) the Project is 100% complete, (iii) all tax credit units have been leased to qualified tenants at least one time, and (iv) all Permanent Loans have closed and funded. Payments made under this guaranty up to \$1,000,000 will be treated as interest free loans ("Development Deficit Loans") to the Partnership.

- B. Operating Deficit Guaranty. Managing General Partner and Guarantor will agree to loan to the Partnership any amounts required to fund operating deficits arising after the expiration of the Completion and Development Deficit Guaranty up to six (6) months of operating expenses (inclusive of must pay annual debt service and replacement reserves) currently estimated to be \$653,115 (the "Operating Deficit Loan Maximum"). Any amounts so advanced will constitute interest-free loans ("Operating Loans") repayable only out of future available cash flow or out of available proceeds of a sale or refinancing. The Operating Deficit Guaranty will terminate 36 months after the later of (i) the expiration of the Completion and Development Deficit Guaranty, or (ii) the Project's achievement of 1.15 to 1 debt service coverage ratio on the Permanent Loans calculated over a period of 12 consecutive months. In addition, in order for the Operating Deficit Guaranty to terminate, the Project must average a 1.15 to 1.00 debt service coverage ratio for the last 12 months of the 36 month period or any subsequent 12 month period and the Operating Reserve must be replenished to its originally required balance of \$319,905.
- C. Repurchase. Managing General Partner and Guarantors will be required to repurchase the Investor's interest upon certain material events including but not limited to: failure to achieve completion by November 31, 2022, failure to achieve stabilization within 36 months of completion, failure to place the Project in service prior to the date required by the Internal Revenue Code, or loss of permanent financing commitments. The Managing General Partner and Guarantors will repurchase the Investor's interest in the Partnership at a price equal to the Investor's Capital Contributions paid to date, plus the actual out of pocket costs to the Investor (including legal, accounting, and consulting) plus 7% interest per annum, less any net tax credits received and retained by the Investor.
- D. Tax Credit Guaranty and Indemnification. Managing General Partner and Guarantors will indemnify Investor for the failure to achieve Projected Federal Credits except if caused by transfer of Investor's Interest or a change in law, in which case any resulting adjusters would be paid solely from the Project's Operating Cash Flow and proceeds from a sale or refinancing. Should the actual tax credits be lower than the Projected Federal Credits, Investor's capital

contributions will be adjusted downward by the amount of the difference and any interest or penalties owed by Investor. Subsequent to the payment of Investor Capital Contributions, Managing General Partner and/or Guarantors will, within 75 days of the end of each calendar year, pay to Investor an amount on an after tax basis equal to the difference in actual tax credits plus any interest or penalties owed by Investor. This guaranty will run for the 15-year term of the compliance period.

- E. Taxable Income Prior to Stabilization. To the extent that the Partnership generates any taxable income prior to Stabilization, the Managing General Partner and Guarantor will be obligated to pay for any tax liability of the Investor Limited Partner due to such taxable income. This includes, but is not limited to, any interest income generated from Partnership assets (such as Guaranteed Investment Contracts) that exceeds the deductible investment expense allocated to the Investor Limited Partner.
- F. Adjuster Provisions. The Capital Contributions are based upon your projection of total federal Low-Income Housing Tax Credits of \$14,373,110 ("Original Projected Credit") to Investor, which in turn is based upon certain assumptions and projections. The following federal (and, if applicable, state) credits are to be delivered to the Investor assuming January 15, 2021 closing:

Credit	2021	2022	2023-2030	2031	2032
<u>Federal Low Income Housing Tax Credit</u>	\$14,445	\$996,731	\$1,213,412	\$1,198,967	\$216,681

The actual amount of Low-Income Housing Tax Credits may in fact change after the determination of eligible and qualified basis. Accordingly, the Capital Contribution may be adjusted when (i) final projections of the amount of Low-Income Housing Tax Credits are completed and/or (ii) upon or after actual completion of the project. Upon satisfaction of all conditions and prior to payment of the Final Capital Contribution, the Partnership Accountant will provide the Investor with Revised Economic Projections and the Final Credit Amount determined by the Accountants.

- G. Credit Adjuster. To the extent such final projected amount of Low-Income Housing Tax Credits varies from the Original Projected Credits, Investor's capital contribution will be adjusted by \$0.96 per federal credit on such variance in the delivery of actual credits to Original Project Credit (as reflected in cost certifications or Form 8609).
- H. Timing Adjuster. Investor's federal credit capital contribution will be adjusted to reflect the later or earlier than projected delivery of federal credits with respect to the first year and, if applicable, the second year, of the credit period, based on a reduction in price of \$0.65 for every federal credit dollar deferred, or an increase based on \$0.65 for every federal credit dollar accelerated.

8. Allocation of Tax Credits, Depreciation, Profits and Losses.

The Tax Credits, depreciation, operating profits and losses will be allocated in accordance with the Percentage Interests.

9. Distribution of Cash Flow.

A. Operating Cash Flow. Operating cash flow will be utilized as follows:

- (i) payment of must pay debt service on the Permanent Loans and other operating expenses;
- (ii) additions to a funded capital replacement reserve as provided in the Partnership Agreement;
- (iii) payment of the Asset Management Fee (\$5,000 per year beginning pro rata in 2021 (increasing 3% per year) to the Special Limited Partner, which fee will accrue if not paid;
- (iv) payment of any tax credit adjuster payments due to a change in law;
- (v) payment of the Deferred Developer Fee;
- (vi) payment of any “soft” loans if applicable;
- (vii) payment of the Partnership Management Fee (\$5,000 per year increasing 3% per year), 50% to the Managing General Partner and 50% to the Administrative General Partner, which fee will accrue if not paid;
- (viii) repayment of any Operating Deficit Loans or General Partner Loan Development Deficit Loans, made by the General Partner;
- (ix) replenishment of the Operating Reserve Account;
- (x) the balance 45% to the Managing General Partner, 45% to the Administrative General Partner, first as payment of an incentive management fee up to 6% of gross revenues and then as a distribution, and 10% to the Investor Limited Partner.

B. Sale or Refinancing Proceeds. Distributions of proceeds from a sale or refinancing of the Project will be distributed as follows:

- (i) payment of all outstanding debt in full and other operating expenses;
- (ii) to the extent reasonably determined necessary by the General Partner, additions to a funded capital replacement reserve;
- (iii) payment of the federal and state “exit” taxes incurred on any negative capital account, if any, of the Investor;

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- (iv) payment of any unpaid, accrued Asset Management Fee;
- (v) payment of any outstanding tax credit adjusters due to a change in law;
- (vi) payment of the Deferred Developer Fee;
- (vii) payment of any unpaid, accrued Partnership Management Fee;
- (viii) repayment of any Operating Deficit Loans or General Partner Development Loans or Development Deficit Loans, made by the General Partner; and
- (ix) 45% to the Managing General Partner, 45% to the General Partner, and 10% to the Investor.

C. Developer Fee. Developer will earn a Developer Fee, projected to be approximately \$3,683,253 to be split 75% and 25% between TBD APC Entity, LLC and TBD Housing Authority Development LLC, or its affiliate, respectively. The timing of the payments toward the Developer Fee is subject to the terms of the Construction Loan, which will be subject to approval by Investor. In the event that the amount of the Final Capital Contribution is insufficient to pay the remaining balance of the Developer Fee, such unpaid balance will be deferred as provided in the Partnership Agreement and will be paid out of Operating Cash Flow and Net Proceeds as provided above, provided that the amount of the unpaid balance must be paid within 13 years after 100% completion of the Project.

10. Property Manager.

TBD with Atlantic Pacific Community Management, LLC providing compliance management. The Property Manager will earn a fee equal to a maximum of 5.0% of the Project's gross collected rents. If the Property Manager is an affiliate or related entity of the General Partner, then the Property Manager may be terminated as Property Manager in the event of the removal of the General Partner from the Partnership.

11. Depreciation.

For the purposes of the pricing contained in this Letter of Intent, we have assumed the Company will depreciate its residential rental property over a 30 year recovery period, Site Work over 15 year period, and Personal Property over 5 year period.

12. Replacement Reserves.

\$300 per unit annually, or greater if required by any Project lender, will be funded as an operating expense into a reserve account.

13. Operating Reserve.

\$319,905, (3 month reserve) or greater if required by any Project lender, will be funded upon Permanent Loan Conversion into a dual control Operating Reserve account to be used for potential operating deficits. These funds may be used to fund operating deficits

during the three year Operating Deficit Guaranty period identified in 7 B above and prior to Guarantors funding under such guaranty, but will be required to be replenished prior to release of the Operating Deficit Guaranty.

14. Investor Review.

As set forth in the Partnership Agreement, Investor will have the right to inspect the Project during and after construction and to review construction loan disbursement requests and other financial and operations matters of the Project and the Partnership.

15. Reporting.

The Partnership will be required to prepare quarterly and annual reports in form and substance satisfactory to Investor as set forth in the Partnership Agreement.

16. Additional Partnership Agreement Terms.

The Partnership Agreement will provide for customary covenants, rights to approve major Partnership matters, representations and warranties, defaults, (including the right to remove the General Partners for bankruptcy, fraud, violations of representations and warranties and other removal rights that are typically held by Investors in low-income housing tax credit transactions), remedies, and indemnities (including Environmental Indemnity) to be more fully described in the Partnership Agreement. The Partnership will carry insurance acceptable to Investor.

17. Transfer of Investor Interest.

Investor will have the right to transfer its interest in the Partnership with notice to the General Partners at no expense to General Partners, and to have the transferee admitted as a substitute limited partner: (i) to any affiliate of Investor, (ii) to any other person or entity provided that the net worth of the proposed transferee will be acceptable to General Partners in their reasonable discretion, or (iii) to a partnership or limited liability company in which the Investor is the general partner or managing member.

18. Transfer of General Partner Interest.

General Partners will not sell, transfer, assign, pledge or encumber any portion of its interest in the Partnership without the prior written consent of Investor.

19. Bank Accounts.

All bank accounts of the Partnership will be maintained with Investor.

20. Conditions to Closing.

Investor's investment in the Partnership in accordance with this letter is subject to the satisfaction of the following conditions precedent on or before the Closing Date, which will occur on or before January 15, 2021 (the "Closing Date").

Heritage Senior Residences

- A. Due Diligence. Investor's satisfactory due diligence review, in its sole and absolute discretion, of all matters pertaining to the Partnership, the General Partner, the Guarantor, the Developer and the Project including, without limitation:
- (1) the construction budget, the scope of work, the construction schedule, all required permits, the construction contract, and all other construction and development matters;
 - (2) title, survey, zoning, engineering and environmental matters;
 - (3) any ground lease;
 - (4) market studies, appraisals, and all other matters regarding project feasibility;
 - (5) all aspects of the project's capital structure: the terms of all loans, grants, tax increment financing and equity contributions;
 - (6) debt service coverages, reserves, rental subsidies, income, expenses, and all other assumptions underlying the Projections;
 - (7) tax matters, including all aspects of all tax-exempt bonds;
 - (8) government benefits, government consents, government requirements and all other regulatory aspects of the Project;
 - (9) all formation documents and government filings of the Partnership, the General Partner, the Guarantor and the Developer; and
 - (10) the financial condition of the General Partner, Guarantor and the Developer.
- B. Negotiation of Satisfactory Documentation. The negotiation of a final Partnership Agreement and related documents (collectively the "Project Documents") that are satisfactory to Investor, Managing General Partner and General Partner. Investor's attorney will prepare and send to General Partner and its attorney the form of the Project Documents.
- C. Opinions. Investor's receipt of a corporate opinion rendered by counsel to General Partner satisfactory to Investor, in form and substance acceptable to Investor.
- D. Consents. Receipt of all necessary consents of governmental authorities and lenders.
- E. Title Insurance. Receipt of a title insurance policy in an amount and in a form acceptable to Investor, provided the amount of such title insurance must be at

least equal to the aggregate of the Total Capital Contribution plus all Permanent Loans. The policy must include a “Fairways” endorsement.

- F. Miscellaneous. Receipt of other items or information reasonably required by Investor.

21. Transaction Expenses.

The Investor is responsible for all of the Investor’s transaction expenses including its legal, market analysis, and accounting fees up to \$86,650. The Managing General Partner is responsible for all such costs to the extent they exceed \$86,650. Investor’s expenses will be paid in the form of capital contribution from the Investor, which is separate from and in addition to the Capital Contribution in paragraph 6. If the Partnership fails to close, the Managing General Partner will be responsible for reimbursing the Investor for all of the Investor’s transaction expenses.

22. Termination.

If the transaction contemplated by this letter fails to close by the Closing Date, as extended by the parties, this letter will be null and void and of no further force and effect, and, neither party will have any claim or demand whatsoever against the other party in connection with this letter, its execution or termination, except the Investor’s transaction expenses identified above.

23. Option to Purchase/Right of First Refusal.

Starting in the first calendar year after the end of the tax credit period, the Administrative General Partner or its affiliate shall have the option for a period of 2 years to purchase the Partnership’s leasehold interest in the Project for an amount equal to the greater of (a) fair market value as determined by an MAI Appraiser or (b) outstanding debt plus taxes payable as a result of the sale plus any amounts owed to the Limited Partners. Further, at any time after the end of the 15 year Compliance Period for a period of 1 year, the Administrative General Partner or its affiliate shall have an option to purchase the Partnership’s leasehold interest in the Project or the interests of the Limited Partners, at the discretion of the Administrative General Partner, for an amount equal to the greater of (a) fair market value as determined by an MAI Appraiser or (b) outstanding debt plus taxes payable as a result of the sale plus any amounts owed to the Limited Partners. At the end of the 15 year tax credit compliance period, the Housing Authority or its affiliate (assuming it is a qualified non-profit) will have a right of first refusal to purchase the Property for an amount equal to outstanding debt plus taxes payable as a result of the sale.

24. Put Option.

At any time after the expiration of the tax credit period, Investor may require that the General Partners purchase Investor’s Interest and Special Limited Partner’s Interest subject to all then existing liens and encumbrances to title for an amount equal to \$100 (the “Put Option”).

25. Tax Disclosure.

Notwithstanding anything to the contrary contained in the Partnership Agreement or any other agreement between the parties hereto, or in any offering materials pertaining to the Project, Investor and each officer, employee, representative or agent of Investor may disclose to any and all persons, without limitation of any kind, (i) the tax treatment and tax structure of the Partnership and any of the Partnership's transactions or activities, and (ii) all materials of any kind (including opinions and tax analysis) that are provided to Investor regarding its investment in the Partnership and/or such transactions or activities of the Partnership. This authorization as to tax disclosure is effective retroactively to the commencement of any discussions between the parties hereto or any of their agents or representatives.

26. Material Adverse Change.

Bank of America 's obligations hereunder shall terminate if, prior to closing, Bank of America determines, in its sole judgment, that there shall exist any conditions regarding the Property, or the operations, business, assets, liabilities or condition (financial or otherwise, including credit rating) of the Partnership or Guarantor or there shall have occurred a material adverse change in, or there shall exist any material adverse conditions in, the market for syndicated bank facilities or the financial, banking, credit or debt capital markets generally, that could be expected to cause the potential Investment to go into default or prevent any guarantor from performing its obligations under any guaranty or to materially and adversely affect the value or marketability of the Investment or the Property.

27. Expiration.

This Letter of Intent will expire at 5:00 p.m. on that date which is five (5) business days from the date hereof unless you execute this Letter Of Intent and return it to us prior to that time, which may be by facsimile transmission. This letter is not intended as a commitment or offer by Investor to invest in the Partnership or the Project, but is intended only to summarize for discussion purposes the equity investment it is considering at this time. Investor must obtain the approval of its Investment Committee with respect to any such investment. After receipt of your signature on this Letter Of Intent and after you provide any additional information that may be required, we will proceed with the necessary due diligence to process your request for Investment Committee Approval; provided, however that in any event, if this investment is not closed within 60 days, this Letter Of Intent will expire.

Heritage Senior Residences, L.P. acknowledges and agrees that: (i) the transaction contemplated by this Summary of Terms and Conditions is an arm's length, commercial transaction between Heritage Senior Residences, L.P. and the Bank in which the Bank is acting solely as a principal and for its own interest; (ii) the Bank is not acting as a municipal advisor or financial advisor to Heritage Senior Residences, L.P.; (iii) the Bank has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Heritage Senior Residences, L.P. with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the

Heritage Senior Residences

Bank has provided other services or is currently providing other services to Heritage Senior Residences, L.P. on other matters); (iv) the only obligations the Bank has to Heritage Senior Residences, L.P. with respect to the transaction contemplated hereby expressly are set forth in this Summary of Terms and Conditions; and (v) the Bank is not recommending that Heritage Senior Residences, L.P. take an action with respect to the transaction contemplated by this Summary of Terms and Conditions, and before taking any action with respect to the contemplated transaction, Heritage Senior Residences, L.P. should discuss the information contained herein with its own legal, accounting, tax, financial and other advisors, as it deems appropriate. If Heritage Senior Residences, L.P. would like a municipal advisor in this transaction that has legal fiduciary duties to Heritage Senior Residences, L.P. is free to engage a municipal advisor to serve in that capacity. This Summary of Terms and Conditions is provided Heritage Senior Residences, L.P. pursuant to and in reliance upon the [bank exemption/RFP exemption/IRMA exemption] provided under the municipal advisor rules of the Securities and Exchange Commission, Rule 15Ba1-1 *et seq.*

Please indicate your agreement and acceptance of the foregoing by signing the enclosed copy of this letter and returning it to the undersigned. We look forward to working with you on this transaction.

Agreed and Accepted:

By: _____

Name: _____

Title: _____

Date: _____

cc: Jason Kaye, Bank of America
Sylvia Monsivais, Bank of America

From: "Kaye, Jason" <jason.kaye@bofa.com>
Date: December 29, 2020 at 6:48:39 PM EST
To: Greg Griffith <ggriffith@apmanagement.net>
Subject: RE: Heritage Senior Residences - Closing Timeline

That is correct.

Jason Kaye

Senior Vice President
Senior Relationship Manager
Community Development Banking
Bank of America
401 E. Las Olas Blvd., 9th Floor, Fort Lauderdale, FL 33301
T 954.765.2141 M 561.592.0212
jason.kaye@bofa.com

Securities and investment services provided by BofA Securities, Inc.



From: Greg Griffith [<mailto:ggriffith@apmanagement.net>]
Sent: Tuesday, December 29, 2020 5:00 PM
To: Kaye, Jason <jason.kaye@bofa.com>
Subject: Heritage Senior Residences - Closing Timeline

Jason,

Per our discussion just now I just wanted to memorialize the fact that when we were originally negotiating the term sheet in September, the assumed closing date was January 15, 2021 due to the fact that the bank did not have the capacity to close another deal by the end of 2020.

Thank you,

GREG GRIFFITH | Vice President
3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136
t: (305) 357.4737 | f: (305) 476.1557 | [Website](#) | [E-Mail](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



EXHIBIT B

SUPPORT FOR DELAYS RELATED TO HUD ENVIRONMENTAL CLEARANCE

Sequence of Events:

- 1) On 7/14/20 the City advised expect the environmental review process to take anywhere from 90-120 days.
- 2) Request for Texas Historical Commission review was submitted on 8/2/20. Digital response received on 9/8/20.
- 3) Endangered Species Act Partner Worksheet, a form that is required to submit to Texas Parks and Wildlife Department (TPWD), was submitted to the City on 9/2/20.
- 4) Per the City, the request for consultation from the TPWD was submitted on 9/22/20.
- 5) TPWD Consultation Response was not received until 11/2/20.
- 6) 1st submission to GLO by the City occurred on 11/5/20. And initial comments from GLO were received 11/25/20.
- 7) GLO Comments were responded to by the City on 12/9/20.
- 8) On 12/30/20 the City informed the 30-day notification period has officially commenced.

Lee Cohen

From: Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>
Sent: Tuesday, July 14, 2020 8:46 AM
To: Lee Cohen; Jenkins, Matthew - HCD
Cc: Greg Griffith; Dan Wilson; Farhoomand, Pirooz - HCD
Subject: RE: Heritage Senior Residences - HUD Part 58-Environmental Assessment

Good Morning Mr. Cohen,

Thank you for your inquiry. Have you been assigned an HCDD project manager/underwriter yet? We receive key pieces of information from our underwriters such as site plans, project descriptions, funding information, Phase 1 Environmental Site Assessments, etc., which triggers our Part 58 Environmental Review process. Once the process is initiated, we typically expect the project to take anywhere from 90-120 days, dependent on environmental conditions, compliance with any number of environmental factors, and in this case, approval of our Environmental Review through the GLO. There is also a 15-day public comment period followed by a 15-day GLO review period of the Request for Release of Funds, which is included within the 90-120 day estimate. Please note that this timeframe is not guaranteed since we do not know what may arise during our review.

Thank you,

Julia Thorp

Environmental Investigator V
Real Estate Compliance/Environmental

City of Houston
Housing and Community Development Dept.
2100 Travis Street | 9th Floor | Houston TX 77002
832.394.6018 (office)
www.houstontx.gov/housing
www.recovery.houstontx.gov
Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

From: Lee Cohen <LCohen@apcommunities.com>
Sent: Monday, July 13, 2020 5:34 PM
To: Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Dan Wilson <dwilson@apcompanies.com>
Subject: Heritage Senior Residences - HUD Part 58-Environmental Assessment

[Message Came from Outside the City of Houston Mail System]
Hello Julia and Matthew,

My name is Lee Cohen and I am part of the team developing Heritage Senior Residences. I'm reaching out to introduce myself and to find out the timeline/requirements in place for HUD Part 58-Environmental Assessment. We will be hiring a consultant to perform the due diligence for the Assessment.

Any details you can provide on the process would be greatly appreciated. We look forward to working with you on this project.

Best,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: (561) 573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



Lee Cohen

From: Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>
Sent: Tuesday, August 4, 2020 1:08 PM
To: Mitchell Young
Cc: Jenkins, Matthew - HCD; Farhoomand, Pirooz - HCD; Lahey, Melissa - HCD; Yindeemark, Paul - HCD; Lee Cohen; Greg Griffith
Subject: RE: Heritage Senior Residences Environmental Review Questions

Good Afternoon Mr. Young,

Thank you, I appreciate this information. Please also keep us in the loop regarding any additional consultation that may be needed with the THC once they respond. We also need to submit a notification to the Texas Parks and Wildlife Department (TPWD) regarding the Endangered Species determination. Once you have prepared the Endangered Species determination, can you please provide us with the documentation so we can notify TPWD? Let me know if you have any questions.

Thank you,

Julia Thorp

Environmental Investigator V
Real Estate Compliance/Environmental

City of Houston
Housing and Community Development Dept.
2100 Travis Street | 9th Floor | Houston TX 77002
832.394.6018 (office)
www.houstontx.gov/housing
www.recovery.houstontx.gov
Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

From: Mitchell Young <myoung@aspenenv.com>
Sent: Sunday, August 2, 2020 11:26 PM
To: Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>
Subject: Re: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Here is a link to an electronic version of our recent submittal to the Texas Historical Commission related to a historical review for the Heritage Senior Residences project. You indicated that you would like to use some of this information for your tribal resources inquiry.

<https://www.dropbox.com/s/4xex9g7w7j7goxj/Heritage%20Senior%20Residences%20SHPO%20Submittal.pdf?dl=0>

Let me know if you need portions of this submittal in another format to assist your inquiry.

Mitch

Mitchell T. Young, P.E.
Aspen Environmental, Inc.
12407 North Mopac Expressway
Suite 250
Austin, Texas 78758
phone: (512) 535-6815
myoung@aspenenv.com

Lee Cohen

From: Mitchell Young <myoung@aspenenv.com>
Sent: Wednesday, September 9, 2020 9:12 AM
To: Lee Cohen
Cc: Greg Griffith
Subject: Fwd: Project Review: 202016548

Here is the electronic response from the THC about the Heritage site. I expect this in the mail in the next day or so. That will be the letter with their official stamp and signature. I will put this with the other info and get the final package together for submittal.

Mitch

Mitchell T. Young, P.E.
Aspen Environmental, Inc.
12407 North Mopac Expressway
Suite 250
Austin, Texas 78758
phone: (512) 535-6815
myoung@aspenenv.com

Begin forwarded message:

From: noreply@thc.state.tx.us
Subject: Project Review: 202016548
Date: September 8, 2020 at 5:20:17 PM CDT
To: myoung@aspenenv.com, reviews@thc.state.tx.us



Re: Project Review under Section 106 of the National Historic Preservation Act and/or the Antiquities Code of Texas

THC Tracking #202016548
Heritage Senior Residences
Center Street and Moy Street
Houston, TX 77007

Dear Mitchell Young:

Thank you for your submittal regarding the above-referenced project. This response represents the comments of the State Historic Preservation Officer, the Executive Director of the Texas Historical Commission (THC), pursuant to review under Section 106 of the National Historic Preservation Act.

The review staff led by Bill Martin and Justin Kockritz has completed its review and has made the following determinations based on the information submitted for review:

Above-Ground Resources

- No historic properties are present or affected by the project as proposed. However, if historic properties are discovered or unanticipated effects on historic properties are found, work should cease in the immediate area; work can continue where no historic properties are present. Please

contact the THC's History Programs Division at 512-463-5853 to consult on further actions that may be necessary to protect historic properties.

Archeology Comments

- No identified historic properties, archeological sites, or other cultural resources are present or affected. However, if cultural materials are encountered during project activities, work should cease in the immediate area; work can continue where no cultural materials are present. Please contact the THC's Archeology Division at 512-463-6096 to consult on further actions that may be necessary to protect the cultural remains.

We look forward to further consultation with your office and hope to maintain a partnership that will foster effective historic preservation. Thank you for your cooperation in this review process, and for your efforts to preserve the irreplaceable heritage of Texas. If you have any questions concerning our review or if we can be of further assistance, please email the following reviewers:

bill.martin@thc.texas.gov, justin.kockritz@thc.texas.gov

This response has been sent through the electronic THC review and compliance system (eTRAC). Submitting your project via eTRAC eliminates mailing delays and allows you to check the status of the review, receive an electronic response, and generate reports on your submissions. For more information, visit <http://thc.texas.gov/etrac-system>.

Sincerely,



For Mark Wolfe, State Historic Preservation Officer
Executive Director, Texas Historical Commission

Please do not respond to this email.

Lee Cohen

From: Mitchell Young <myoung@aspenenv.com>
Sent: Wednesday, September 2, 2020 1:48 AM
To: Thorp, Julia - HCD
Cc: Lee Cohen; Greg Griffith
Subject: Re: Heritage Senior Residences Environmental Review Questions
Attachments: [Endangered-Species-Act-Partner-Worksheet.pdf](#)

Julia:

As requested, here is information that will be part of the Part 58 environmental summary reports. You indicated that you would like to have the Endangered Species section to make direct inquiries with the Texas Parks and Wildlife Department.

We should have the full Part 58 Environmental Assessment documents soon. We have updated the Phase I ESA from January 2020 and are awaiting the Texas Historical Commission response.

Let us know if you need anything else in the interim.

Mitch

Mitchell T. Young, P.E.
[Aspen Environmental, Inc.](#)
12407 North Mopac Expressway
Suite 250
Austin, Texas 78758
phone: (512) 535-6815
myoung@aspenenv.com

Lee Cohen

From: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Sent: Thursday, December 10, 2020 9:09 AM
To: Lee Cohen; Mitchell Young
Cc: Greg Griffith; Alfaro, David - HCD; McDaniel, Ebony - HCD; Thorp, Julia - HCD; Lahey, Melissa - HCD; Farhoomand, Pirooz - HCD
Subject: RE: Heritage Senior Residences Environmental Review Questions

The comments were returned to GLO yesterday. Thanks for following up and we will keep you posted as we move forward.

Thanks so much,
Matt

Matthew Jenkins

Environmental Investigator V

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

matthew.jenkins@houstontx.gov



From: Lee Cohen <LCohen@apcommunities.com>
Sent: Thursday, December 10, 2020 8:04 AM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning Matt,

Reaching out to see if the environmental review comments have been returned to the GLO. Any updates would be greatly appreciated.

Thank you,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)



From: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Sent: Tuesday, December 1, 2020 5:19 PM
To: Lee Cohen <LCohen@apcommunities.com>; Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: Re: Heritage Senior Residences Environmental Review Questions

Lee,

Thanks so much and the Environmental Team is reviewing these items. We will let you know if we have any questions or comments before we can move forward with these.

Thanks so much and have a great day.

Matt

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Lee Cohen <LCohen@apcommunities.com>
Sent: Tuesday, December 1, 2020 3:50:51 PM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

Please see responses below. Let me know if you need additional support.

Local elevation requirements:	The City of Houston requires the finish floor to be 12" above the connecting SS MH rim elevation.
Site drainage and detention:	On-site drainage is collected via roof drains and is detained by a tank system located underneath the parking structure. The domestic and fire water connections are to existing public lines at the NW corner of the site. The sanitary connection is to an existing sanitary manhole at the south side of the site.
Safety during development:	Sitewide adherence to OSHA guidelines, enforced daily by Site Supervision team, documented weekly by all subcontractor's on site,

	and audited bi-weekly by an independent 3 rd party safety inspection service.
Security during development:	Installation and regular maintenance of perimeter temp fencing, combined with the use of security cameras and/or security patrol during non-operating hours to ensure a secure site.
Safety and security during operation:	Facility will have controlled access through fobs. There will be 67 security cameras, a gated garage, telephone entry system, secured stairways, fob activated elevators, and fobs to access amenities within community.

Thank you,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



From: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>

Sent: Tuesday, December 1, 2020 10:56 AM

To: Mitchell Young <myoung@aspennv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>; Lee Cohen <LCohen@apcommunities.com>

Subject: RE: Heritage Senior Residences Environmental Review Questions

Importance: High

Please confirm if there are any updates, so we can update our review accordingly in response to the GLO comments, and keep moving forward.

Thanks so much, and have a great day and great week. Stay safe and take care.

Matt

Matthew Jenkins

Environmental Investigator V

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

matthew.jenkins@houstontx.gov



From: Jenkins, Matthew - HCD
Sent: Wednesday, November 25, 2020 9:26 AM
To: Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>; Lee Cohen <LCohen@apcommunities.com>
Subject: RE: Heritage Senior Residences Environmental Review Questions

Mitch,

The GLO has submitted comments on the Heritage Senior Environmental Review, and we are in the process of updating a few items in our report and are reaching out to your office to gather potentially helpful information: The GLO comment for which we are reaching out is as follows:

*“Please include discussion any local elevation requirements.
Please provide a description of site drainage and detention systems, and how utility services will be provided to site (i.e., connecting to existing utilities or need for site water and sewer facilities) in the project description.
Please include discussion of safety and security during operation.”*

Any comments or feedback on these items, particularly related to water and sewer, safety/security during the development itself, and applicable steps to perform elevation (if any) are welcome and will be reviewed so they can be incorporated into our report and our response to GLO.

Please note that we will be out Thursday and Friday for Thanksgiving Holiday, but we look forward to working with you and to having a response to GLO ASAP next week so we can continue moving forward.

Thanks so much and have a great day.

Stay safe, and take care.

Matt

Matthew Jenkins

**Environmental Investigator V
Real Estate Compliance/Environmental**
City of Houston, Housing & Community Development Department
2100 Travis, 9th Floor, Houston, Texas 77002
Office Phone (832) 394-6183
Mobile Phone (346) 266-7836
matthew.jenkins@houstontx.gov



From: Lee Cohen <LCohen@apcommunities.com>
Sent: Friday, November 6, 2020 8:35 AM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

Thank you for the update! Hope everyone has a great weekend!

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



From: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Sent: Friday, November 6, 2020 9:30 AM
To: Lee Cohen <LCohen@apcommunities.com>; Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

Lee,

Thank you for checking in.

Heritage Senior was submitted to GLO late yesterday.

Thanks so much again, and have a great day. Stay safe and take care.

Matt

Matthew Jenkins

Environmental Investigator V

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

Office Phone (832) 394-6183
Mobile Phone (346) 266-7836
matthew.jenkins@houstontx.gov



From: Lee Cohen <LCohen@apcommunities.com>
Sent: Friday, November 6, 2020 8:22 AM
To: Mitchell Young <myoung@aspennv.com>; Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]
Good morning all,

Checking in to confirm everything has been provided in order to submit the environmental review to GLO. Please advise.

Thanks!

LEE COHEN | Development Associate
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136
m: 561.573.6628 | [Website](#) | [Email](#)
ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



From: Mitchell Young <myoung@aspennv.com>
Sent: Wednesday, November 4, 2020 2:56 AM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Cc: Lee Cohen <LCohen@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Julia Thorp <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: Re: Heritage Senior Residences Environmental Review Questions

Thank you for your comments. I have tried to clarify the issues in your note so it makes sense for the reviewers at the GLO.

Here is a link to the updated Phase I ESA report. Let me know if I have clarified the issues at J&L Sheet Metal issues and the former nearby laundromat or if we have used language that is still confusing.

<https://www.dropbox.com/s/wz0ckq4cykby7np/200896%20Heritage%20Senior%20Residences%20Houston%20Env%20Report.pdf?dl=0>

Mitch

Mitchell T. Young, P.E.
Aspen Environmental, Inc.
12407 North Mopac Expressway
Suite 250
Austin, Texas 78758
phone: (512) 535-6815
myoung@aspennv.com

On Nov 2, 2020, at 11:39 AM, Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov> wrote:

Lee and Mitch,

Good morning. We have received the TPWD consultation response, and as expected we have a No Effect determination, which means there are no formal mitigation requirements.

Our Environmental Review Record (ERR) is complete, but before we can send it to the GLO, we must clarify the language in the Phase I ESA report, as outlined below. In the past, the GLO has reviewed Phase I ESA reports and asked for clarification. To prevent any further delays on the project, we are asking for more concrete language.

1. **In the executive summary, it states:**

This assessment has revealed no evidence of recognized environmental conditions in connection with the property, except as noted below.

J&L Sheet Metal on the subject property appeared on the petroleum storage tank (PST) and leaking PST lists for a release of petroleum products that impacted soil only. The TCEQ reviewed testing results at the time of the tank removal and did not recommend additional remediation or testing related to the past presence of the PST.

Past use of the property as a sheet metal facility raised concerns about past handling of production and cleaning wastes. Information provided by the current property owner indicates that soil and groundwater were tested prior to acquisition from the sheet metal company and no significant contamination was identified at that time (2010).

No other assessment for environmental conditions is recommended at this time.

Although it is clear that no additional assessments are recommended, please clarify within the Phase I ESA report whether the two items listed above are considered RECs or not. At present, the statements in the summary and the body of the report are contradictory. If the aforementioned items are not RECs, please clarify if they are considered HRECs or if they are of no concern.

2. **It is noted in the photo log that there was a former dry cleaners located at 1009 Moy Street. Please include language within the Phase I ESA declaring whether or not the former dry cleaners presents an environmental concern to the site (REC, HREC, CREC or no concern).**

Once these two items are clarified within the Phase I ESA, we will be able to submit the ERR to the GLO. Thank you for your attention to this matter, and we are looking forward to submitting the ERR as soon as possible.

Thanks so much, and have a great day. Stay safe and take care.

Matt

Matthew Jenkins

Environmental Investigator V

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

matthew.jenkins@houstontx.gov

<image002.png>

From: Lee Cohen <LCohen@apcommunities.com>

Sent: Monday, November 2, 2020 9:33 AM

To: Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Jenkins, Matthew - HCD

<Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>;

McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD

<Julia.Thorp@houstontx.gov>

Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning,

Checking in to see if any progress has been made with the TPWD response and the submission of the Environmental Review to GLO. Tomorrow will be six weeks since the request for consultation was submitted to TPWD. Just want to make sure this keeps moving forward and does not effect our closing of the CDBG-DR loan.

Thank you again for your help throughout this process.

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO

<image003.png>

From: Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>

Sent: Monday, October 26, 2020 10:34 AM

To: Lee Cohen <LCohen@apcommunities.com>; Jenkins, Matthew - HCD

<Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>;

McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD

<Julia.Thorp@houstontx.gov>

Subject: RE: Heritage Senior Residences Environmental Review Questions

Good morning Lee,

Matt is out until tomorrow. The TPWD response is still pending. We are not waiting for any other items, and once we receive the TPWD response we will be able to submit the environmental review to the GLO. We will keep you posted on the status and let you know as soon as we are able to submit.

Thanks,

Melissa Lahey

Environmental Investigator III

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department
2100 Travis, 9th Floor, Houston, Texas 77002

melissa.lahey@houstontx.gov

(832) 394-6397

From: Lee Cohen <LCohen@apcommunities.com>

Sent: Monday, October 26, 2020 9:25 AM

To: Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>

Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning,

Reaching out to see where we are in the review process for Heritage Senior Residences. Has the TPWD response been received? Are there any other pending items for this review? Please advise.

Thank you!

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO

<image003.png>

From: Lee Cohen

Sent: Tuesday, October 20, 2020 9:41 AM

To: Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>

Subject: RE: Heritage Senior Residences Environmental Review Questions

Good morning,

Checking in to see how the review process is going and if the TPWD response has been received. Please let me know if there is anything I can do to assist.

Thank you,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO

<image003.png>

From: Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>

Sent: Tuesday, October 13, 2020 9:30 AM

To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Lee Cohen <LCohen@apcommunities.com>; Mitchell Young <myoung@aspenenv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>

Subject: RE: Heritage Senior Residences Environmental Review Questions

Good morning All,

The request for consultation from the TPWD was submitted on 9/22 and we are still waiting a response. It is expected soon because other projects have had a quick turnaround.

Thanks,

Melissa Lahey

Environmental Investigator III

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

melissa.lahey@houstontx.gov

(832) 394-6397

From: Jenkins, Matthew - HCD

Sent: Tuesday, October 13, 2020 7:58 AM

To: Lee Cohen <LCohen@apcommunities.com>; Mitchell Young <myoung@aspenenv.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>

Subject: Re: Heritage Senior Residences Environmental Review Questions

We will take a look, review, and let you know.

Melissa, please confirm when we can expect the TPWD response so it can be added to package as needed.

Thanks so much,

Matt

From: Lee Cohen <LCohen@apcommunities.com>
Sent: Monday, October 12, 2020 5:13:28 PM
To: Mitchell Young <myoung@aspennv.com>; Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

I believe all documents have been submitted for review at this time. Will there be additional review comments to address? If so, we will provide responses to those comments and any additional documents you may need in one email response.

Thank you,

LEE COHEN | Development Associate
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136
m: 561.573.6628 | [Website](#) | [Email](#)
ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO
<image003.png>

From: Mitchell Young <myoung@aspennv.com>
Sent: Friday, October 9, 2020 6:58 AM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Cc: Lee Cohen <LCohen@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Julia Thorp <Julia.Thorp@houstontx.gov>
Subject: Re: Heritage Senior Residences Environmental Review Questions
Importance: High

As requested, here is the Statutory Checklist for the Heritage Senior Residences project.

Thank you for your review and comments on these documents.

Mitch

Mitchell T. Young, P.E.
Aspen Environmental, Inc.
12407 North Mopac Expressway
Suite 250
Austin, Texas 78758
phone: (512) 535-6815
fax: (512) 535-1149
mobile: (512) 563-3223
myoung@aspennv.com

On Oct 2, 2020, at 2:38 PM, Jenkins, Matthew - HCD
<Matthew.Jenkins@houstontx.gov> wrote:

Mitch,

Thank you for sending these documents for our review. The Team is examining the information available.

Two recommendations:

1. On Page 2 of the Phase I, the Conclusions and Recommendations read as follows:

1.2 CONCLUSIONS AND RECOMMENDATIONS

Aspen has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527-13 of the proposed Heritage Senior Residences Development Site property located near the intersection of Center Street and Moy Street in Houston, Texas, "the property". Any exceptions to, or deletions from, this practice are described in Section 2.3 of this report. This assessment has revealed no evidence of recognized environmental conditions in connection with the property, except as noted below. J&L Sheet Metal on the subject property appeared on the petroleum storage tank (PST) and leaking PST lists for a release of petroleum products that impacted soil only. The TCEQ reviewed testing results at the time of the tank removal and did not recommend additional remediation or testing related to the past presence of the PST. Past use of the property as a sheet metal facility raised concerns about past handling of production and cleaning wastes. Information provided by the current property owner indicates that soil and groundwater were tested prior to acquisition from the sheet metal company and no significant contamination was identified at that time (2010). No other assessment for environmental conditions is recommended at this time."

While it appears that contamination has been ruled out, the language (particularly the discussion of the RECs highlighted above) is ambiguous and could be potentially confusing to readers and reviewers, since it is not 100% clear whether any RECs are still left on site. This language should be tightened to dispel any doubts, or if any RECs remain they should be addressed accordingly.

2. The supporting documents, which include an ERR, only contain the NEPA factors and do not include the Statutory Checklist. The Statutory Checklist per 24 CFR 58 (24 CFR 58.5) is a required component of the HUD Environmental Review and must be completed (along with all backup documentation) so we have a full Environmental Review package to review. If this item is still in draft stage due to outstanding information (i.e. TPWD letter) feel free to send over an attachment or link to draft if that is amenable. If that does not work for whatever reason, we will await it after the TPWD response is received, but note that it could be helpful for us to get a head start in reviewing the Statutory Checklist items ASAP.

Thanks so much, and have a great day. Saty safe, take care.

Matt

Matthew Jenkins

Environmental Investigator V

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

matthew.jenkins@houstontx.gov

<image001.png>

From: Mitchell Young <myoung@aspennv.com>

Sent: Friday, October 2, 2020 7:59 AM

To: Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>

Cc: Lee Cohen <lcohen@apcommunities.com>; Greg Griffith

<ggriffith@apmanagement.net>; Jenkins, Matthew - HCD

<Matthew.Jenkins@houstontx.gov>; Lahey, Melissa - HCD

<Melissa.Lahey@houstontx.gov>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>;

McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>

Subject: Re: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Attached are links to download environmental review documents related to the Heritage Senior Residences project. These include an updated Phase I Environmental Site Assessment and the supporting documents/worksheets for the Part 58 process. We received a site-specific noise assessment on Thursday that has been added to the supporting documents.

We understand that you have submitted consultation requests to the Texas Parks and Wildlife Department and additional tribal entities (also included in the packet), and we can add any responses to the final package as received.

Please review the referenced documents and let us know if you see anything that will clarify or update the information before the package is finalized for submittal.

Here are the links:

<https://www.dropbox.com/s/8vicrr72j64tmuc/200896%20Heritage%20Senior%20Residences%20Houston%20Env%20Report.pdf?dl=0>

<https://www.dropbox.com/s/dayct962qbiucjp/Supporting%20Documents%20for%20Heritage%20Senior%20Residences.pdf?dl=0>

Let me know if you have any trouble getting to the documents. Thank you for your review and comments.

Mitch

Mitchell T. Young, P.E.
[Aspen Environmental, Inc.](#)
*12407 North Mopac Expressway
Suite 250
Austin, Texas 78758
phone: (512) 535-6815
myoung@aspenenv.com*

Lee Cohen

From: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Sent: Wednesday, December 30, 2020 3:02 PM
To: Lee Cohen; Mitchell Young
Cc: Greg Griffith; Alfaro, David - HCD; McDaniel, Ebony - HCD; Thorp, Julia - HCD; Lahey, Melissa - HCD; Farhoomand, Pirooz - HCD
Subject: RE: Heritage Senior Residences Environmental Review Questions

Public notice in today's paper – public comment period begins today.

Thanks,
Matt

Matthew Jenkins

Environmental Investigator V

Real Estate Compliance/Environmental

City of Houston, Housing & Community Development Department

2100 Travis, 9th Floor, Houston, Texas 77002

Office Phone (832) 394-6183

Mobile Phone (346) 266-7836

matthew.jenkins@houstontx.gov



From: Lee Cohen <LCohen@apcommunities.com>
Sent: Wednesday, December 30, 2020 1:54 PM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspennv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Hi Matt,

Checking in to see if GLO had a chance to review the comments yet or if the 30-day notice period has commenced. Any updates would be greatly appreciated.

Thank you, and have a happy new year!

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



From: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>
Sent: Thursday, December 10, 2020 9:09 AM
To: Lee Cohen <LCohen@apcommunities.com>; Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

The comments were returned to GLO yesterday. Thanks for following up and we will keep you posted as we move forward.

Thanks so much,
Matt

Matthew Jenkins

Environmental Investigator V
Real Estate Compliance/Environmental
City of Houston, Housing & Community Development Department
2100 Travis, 9th Floor, Houston, Texas 77002
Office Phone (832) 394-6183
Mobile Phone (346) 266-7836
matthew.jenkins@houstontx.gov



From: Lee Cohen <LCohen@apcommunities.com>
Sent: Thursday, December 10, 2020 8:04 AM
To: Jenkins, Matthew - HCD <Matthew.Jenkins@houstontx.gov>; Mitchell Young <myoung@aspenenv.com>
Cc: Greg Griffith <ggriffith@apmanagement.net>; Alfaro, David - HCD <David.Alfaro@houstontx.gov>; McDaniel, Ebony - HCD <Ebony.McDaniel@houstontx.gov>; Thorp, Julia - HCD <Julia.Thorp@houstontx.gov>; Lahey, Melissa - HCD <Melissa.Lahey@houstontx.gov>; Farhoomand, Pirooz - HCD <Pirooz.Farhoomand@houstontx.gov>
Subject: RE: Heritage Senior Residences Environmental Review Questions

[Message Came from Outside the City of Houston Mail System]

Good morning Matt,

Reaching out to see if the environmental review comments have been returned to the GLO. Any updates would be greatly appreciated.

Thank you,

EXHIBIT C

SUPPORT FOR DELAYS RELATED TO SUBORDINATE DEBT

Sequence of Events:

- 1) Executed LOI with the City on 7/30/20.
- 2) Third Party Legal Services Letter received on 10/14/20.
- 3) First draft of Due Diligence Checklist received on 11/11/20.
- 4) First draft of City Loan Documents received on 12/8/20.
- 5) Anticipate City Council approval on 1/20/21.

From: Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>

Sent: Monday, September 14, 2020 3:26 PM

To: Lee Cohen <LCohen@apcommunities.com>

Cc: Dan Wilson <dwilson@apcompanies.com>; Carine Yhap <cyhap@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>

Subject: RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

Hi Lee,

Heritage is on the Housing Committee's agenda for tomorrow. I will be monitoring for the Board's questions and concerns (if any).

b. HCDD recommends Council approval of an Ordinance authorizing \$11,700,000.00 of Community Development Block Grant - Disaster Recovery 2017 (CDBG-DR17) funds, for a Contract between the City of Houston (City) and Heritage Senior Residences, LP (Borrower) for the land acquisition and new development of Heritage Senior Residences. (District C)

I

Meanwhile, our internal councils are still in the process of selecting the legal team to work on the loan documents.

When both of our legal parties are engaged, you can start circulating a distribution list and initiate biweekly/weekly conference calls.

The City Council date is likely to be determined contingent upon the readiness from legal, permits, and underwriting procedures.

For the timeline, if all goes well then we should be able to achieve both the City Council Date and Closing date in November.

Thanks,

Paul Yindeemark
Financial Analyst IV
Multifamily Division

City of Houston
Housing and Community Development Dept.
2100 Travis Street | 9th Floor | Houston TX 77002
T: (832)523-3437
www.houstontx.gov/housing
www.recovery.houstontx.gov
Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

From: Lee Cohen <LCohen@apcommunities.com>

Sent: Tuesday, September 8, 2020 4:03 PM

To: Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>

Cc: Dan Wilson <dwilson@apcompanies.com>; Carine Yhap <cyhap@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>

Subject: RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

[Message Came from Outside the City of Houston Mail System]

Hi Paul,

Hope you had a nice holiday weekend visiting the beach in Florida.

Writing to inform you all three entities are officially registered with SAM.gov.

When we spoke last week you mentioned we passed Project Review Committee and next would be the City Review. How long does the City Review process take, and what is the next step after that? Any details you can provide on the process/timeline would be greatly appreciated.

Thank you,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



From: Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>

Sent: Tuesday, September 1, 2020 5:46 PM

To: Lee Cohen <LCohen@apcommunities.com>

Cc: Dan Wilson <dwilson@apcompanies.com>; Carine Yhap <cyhap@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>

Subject: RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

Lee,

Great! thanks for the confirmation. I'll keep you posted.

Paul Yindeemark
Financial Analyst IV
Multifamily Division

City of Houston
Housing and Community Development Dept.
2100 Travis Street | 9th Floor | Houston TX 77002
T: (832)523-3437

www.houstontx.gov/housing

www.recovery.houstontx.gov

Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

From: Lee Cohen <LCohen@apcommunities.com>
Sent: Tuesday, September 1, 2020 4:41 PM
To: Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>
Cc: Dan Wilson <dwilson@apcompanies.com>; Carine Yhap <cyhap@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>
Subject: RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

[Message Came from Outside the City of Houston Mail System]
Hi Paul,

We checked the registration status of the remaining two entities and are both still showing as "Registration Status: Submitted." They should be finalized any day now.

As for paying for third party legal costs, we choose to deposit the fund to the City's custody account now. Please let us know how we can take care of the payment.

Thank you,

LEE COHEN | Development Associate
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



From: Yindeemark, Paul - HCD <Paul.Yindeemark@houstontx.gov>
Sent: Tuesday, September 1, 2020 2:36 PM
To: Lee Cohen <LCohen@apcommunities.com>
Cc: Dan Wilson <dwilson@apcompanies.com>; Carine Yhap <cyhap@apcommunities.com>; Greg Griffith <ggriffith@apmanagement.net>
Subject: RE: Reminder: Please DocuSign: HCDD DR-17 LOI Heritage Senior Residences.pdf

Hi Lee,

Quick updates and questions on the project before my presentation to our Project Review Committee this afternoon.

What's the status for the rest of the Sam.gov registrations.

Also, please let me know your preference on how you will be paying for the third party legal cost.

- disburse the fund later at closing (settlement statement)
- deposit the fund to City's custody account now

Thank you,

Paul Yindeem ark
Financial Analyst IV
Multifamily Division

City of Houston
Housing and Community Development Dept.
2100 Travis Street | 9th Floor | Houston TX 77002
T: (832)523-3437

www.houstontx.gov/housing

www.recovery.houstontx.gov

Follow us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [YouTube](#)

From: [Nancy Martin](#)
To: [Lee Cohen](#)
Cc: [Greg Griffith](#); [Dan Wilson](#); Paul.Yindeemark@houstontx.gov; [Miller, Ray - HCD](#); [Brunilda Santiago](mailto:Brunilda.Santiago@houstontx.gov)
Subject: RE: Heritage Senior Residences City Loan
Date: Wednesday, October 14, 2020 4:09:52 PM
Attachments: [image001.png](#)
[Heritage Legal Services Letter.pdf](#)

Third Party Legal Services
Letter received on 10/14/20.

Hi Lee,

Attached is our Firm's legal services letter for execution along with the wiring instructions for our trust account. After execution, please return a signed copy of the letter to me via email and wire the \$49,000 fee to our trust account. Once the funds are received, I can start work on the project. Thanks so much.

From: Lee Cohen [mailto:LCohen@apcommunities.com]
Sent: Monday, October 12, 2020 4:54 PM
To: Nancy Martin
Cc: rmorrow@lockelord.com; Greg Griffith; Dan Wilson
Subject: Heritage Senior Residences

Hi Nancy,

Paul Yindeemark from the City of Houston's Housing and Community Development Department advised we will be working together on the CDBG-DR loan agreement for our development, Heritage Senior Residences. Please let me know if you need anything from our team or if there is a due diligence I can get started on. In this email I've included Greg Griffith and Dan Wilson from the AP Team, and Rick Morrow from Locke Lord.

We look forward to working with you.

Regards,

LEE COHEN | Development Associate
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



From: [Nancy Martin](#)
To: [Lee Cohen](#)
Cc: [Greg Griffith](#); [Dan Wilson](#); "[Paul.Yindeemark@houstontx.gov](#)"; "[Miller, Ray - HCD](#)"; "[Brunilda Santiago \(Brunilda.Santiago@houstontx.gov\)](#)"; [Francie Sargent \(Brunilda.Santiago@houstontx.gov\)](#)
Subject: RE: Heritage Senior Residences City Loan - Checklist
Date: Wednesday, November 11, 2020 7:22:37 PM
Attachments: [image001.png](#)
[Heritage Seniors Checklist - 11-11-20.doc](#)

First draft of Due Diligence Checklist received on 11/11/20

Attached is a first draft.

From: Nancy Martin
Sent: Tuesday, November 10, 2020 4:41 PM
To: 'Lee Cohen' <LCohen@apcommunities.com>
Cc: [Greg Griffith](#) <ggriffith@apmanagement.net>; [Dan Wilson](#) <dwilson@apcompanies.com>; [Paul.Yindeemark@houstontx.gov](#); [Miller, Ray - HCD](#) <Ray.Miller@houstontx.gov>; [Brunilda Santiago \(Brunilda.Santiago@houstontx.gov\)](#) <Brunilda.Santiago@houstontx.gov>; [Francie Sargent](#) <fsargent@smfadlaw.com>
Subject: RE: Heritage Senior Residences City Loan

Tomorrow!

From: Lee Cohen [<mailto:LCohen@apcommunities.com>]
Sent: Tuesday, November 10, 2020 4:12 PM
To: Nancy Martin <nmartin@smfadlaw.com>
Cc: [Greg Griffith](#) <ggriffith@apmanagement.net>; [Dan Wilson](#) <dwilson@apcompanies.com>; [Paul.Yindeemark@houstontx.gov](#); [Miller, Ray - HCD](#) <Ray.Miller@houstontx.gov>; [Brunilda Santiago \(Brunilda.Santiago@houstontx.gov\)](#) <Brunilda.Santiago@houstontx.gov>; [Francie Sargent](#) <fsargent@smfadlaw.com>
Subject: RE: Heritage Senior Residences City Loan

Hi Nancy,

Following up to see if you have an ETA on the checklist.

Thanks!

LEE COHEN | Development Associate
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136
m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS MIAMI PINECREST SAN DIEGO



From: Nancy Martin <nmartin@smfadlaw.com>

Sent: Friday, November 6, 2020 9:31 AM

To: Lee Cohen <LCohen@apcommunities.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Dan Wilson <dwilson@apcompanies.com>; Paul.Yindeemark@houstontx.gov; Miller, Ray - HCD <Ray.Miller@houstontx.gov>; Brunilda Santiago (Bruilda.Santiago@houstontx.gov) <Bruilda.Santiago@houstontx.gov>; Francie Sargent <fsargent@smfadlaw.com>

Subject: RE: Heritage Senior Residences City Loan

I will send you a checklist either today or Monday.

From: Lee Cohen [<mailto:LCohen@apcommunities.com>]

Sent: Friday, November 6, 2020 8:29 AM

To: Nancy Martin

Cc: Greg Griffith; Dan Wilson; Paul.Yindeemark@houstontx.gov; Miller, Ray - HCD; Brunilda Santiago (Bruilda.Santiago@houstontx.gov); Francie Sargent

Subject: RE: Heritage Senior Residences City Loan

Good morning Nancy,

Reaching out to see if there is a list of documents we can start putting together for you and the team.

Thank you,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



From: Nancy Martin <nmartin@smfadlaw.com>

Sent: Wednesday, October 28, 2020 10:16 AM

To: Lee Cohen <LCohen@apcommunities.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Dan Wilson <dwilson@apcompanies.com>; Paul.Yindeemark@houstontx.gov; Miller, Ray - HCD <Ray.Miller@houstontx.gov>; Brunilda Santiago (Bruilda.Santiago@houstontx.gov) <Bruilda.Santiago@houstontx.gov>; Francie Sargent <fsargent@smfadlaw.com>

Subject: RE: Heritage Senior Residences City Loan

Receipt confirmd.

From: Lee Cohen [<mailto:LCohen@apcommunities.com>]

Sent: Wednesday, October 28, 2020 8:09 AM

To: Nancy Martin <nmartin@smfadlaw.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Dan Wilson <dwilson@apcompanies.com>; Paul.Yindeemark@houstontx.gov; Miller, Ray - HCD <Ray.Miller@houstontx.gov>; Brunilda Santiago (Brunilda.Santiago@houstontx.gov) <Brunilda.Santiago@houstontx.gov>; Francie Sargent <fsargent@smfadlaw.com>

Subject: RE: Heritage Senior Residences City Loan

Good morning Nancy.

Please see attached executed legal services letter. Our accounting team sent the wire yesterday, please let me know if it has been received.

Thank you,

LEE COHEN | Development Associate

Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



From: Nancy Martin <nmartin@smfadlaw.com>

Sent: Wednesday, October 14, 2020 4:10 PM

To: Lee Cohen <LCohen@apcommunities.com>

Cc: Greg Griffith <ggriffith@apmanagement.net>; Dan Wilson <dwilson@apcompanies.com>; Paul.Yindeemark@houstontx.gov; Miller, Ray - HCD <Ray.Miller@houstontx.gov>; Brunilda Santiago (Brunilda.Santiago@houstontx.gov) <Brunilda.Santiago@houstontx.gov>; Francie Sargent <fsargent@smfadlaw.com>

Subject: RE: Heritage Senior Residences City Loan

Hi Lee,

Attached is our Firm's legal services letter for execution along with the wiring instructions for our trust account. After execution, please return a signed copy of the letter to me via email and wire the \$49,000 fee to our trust account. Once the funds are received, I can start work on the project. Thanks so much.

From: Lee Cohen [<mailto:LCohen@apcommunities.com>]

Sent: Monday, October 12, 2020 4:54 PM

To: Nancy Martin

Cc: rmorrow@lockelord.com; Greg Griffith; Dan Wilson

Subject: Heritage Senior Residences

Hi Nancy,

Paul Yindeemark from the City of Houston's Housing and Community Development Department advised we will be working together on the CDBG-DR loan agreement for our development, Heritage Senior Residences. Please let me know if you need anything from our team or if there is a due diligence I can get started on. In this email I've included Greg Griffith and Dan Wilson from the AP Team, and Rick Morrow from Locke Lord.

We look forward to working with you.

Regards,

LEE COHEN | Development Associate

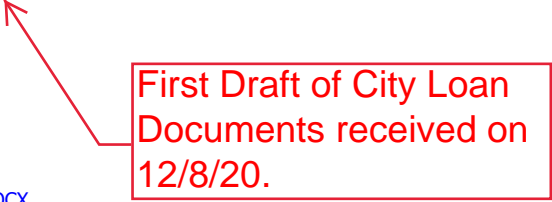
Atlantic Pacific Communities | 3 Miami Central | 161 NW 6th Street, Suite 1020 | Miami, FL 33136

m: 561.573.6628 | [Website](#) | [Email](#)

ATLANTA AUSTIN BAY HARBOR BOCA RATON DALLAS **MIAMI** PINECREST SAN DIEGO



From: [Nancy Martin](#)
To: [Greg Griffith](#); [Lee Cohen](#); [Dan Wilson](#); [Michael Fincher](#); "[crichardson@lockelord.com](#)"; "[cbast@lockelord.com](#)"; [Paul.Yindeemark@houston.tx.gov](#)"; "[Martinez, Ana - HCD](#)"; "[Morrow, Richard D.](#)"
Subject: [Heritage Senior Residences - First Draft City Loan Documents](#)
Date: [Tuesday, December 8, 2020 6:04:46 PM](#)
Attachments: [Affidavit - No Commissions - Borrower 12-8.doc](#)
[Affidavit - Use of City Funds.doc](#)
[Attachment A - Restrictions.docx](#)
[Attachment B - Borrower's Note 12-8.docx](#)
[Attachment D - UCC 1.pdf](#)
[ATTACHMENT E - reserved.docx](#)
[ATTACHMENT F - reserved.docx](#)
[Attachment G - Guaranty.docx](#)
[Attachment H - Declaration of Subordination 12-8.DOCX](#)
[Attachment I - Intercreditor Agreement.DOCX](#)
[Attachment K - Collateral Assignment of Property Management Agreement.doc](#)
[Attachment L - Assignment of Architect's Contract 12-8v2.doc](#)
[Attachment M - Assignment of Construction Contract \(City of Houston CDBG-DR\) DMEAST 39158599\(3\).doc](#)
[Attachment N - Environmental Indemnity.doc](#)
[CERTIFICATION REGARDING DEBARMENT.docx](#)
[CERTIFICATION REGARDING LOBBYING.doc](#)
[Loan Agreement - Direct Loan 12-7-20.docx](#)
[Attachment C - Deed of Trust.docx](#)
[Attachment O - Bonds 12-8.doc](#)



Please see attached for your review. I will need the following documents to submit to City Council:

- | | |
|-----------|------------------------------------|
| EXHIBIT A | Legal Description of the "Land" |
| EXHIBIT B | Commitments for "Other Financings" |
| EXHIBIT C | Preliminary Construction Budget |
| EXHIBIT D | Scope of Work |
| EXHIBIT E | Construction Schedule. |

There is no Council meeting for the last 2 weeks in December so the soonest that this can go is January.

20223

Campanile on Briar Hollow



December 2, 2020

Ms. Alena R. Morgan, JD
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St.
Austin, TX 78701

Via Email: alena.morgan@tdhca.state.tx.us

RE: Waiver Request for Readiness to Proceed Penalty – Campanile on Briar Hollow (TDHCA # 20223)

Dear Ms. Morgan,

As indicated to staff, Campanile on Briar Hollow LP (the “Partnership”) was unable to meet the closing requirement outlined in §11.9(c)(8) of the 2020 QAP related to Readiness to Proceed due to litigation initiated by adjacent homeowner associations and a delay in receiving loan documentation from the City of Houston. A timeline pertaining to the legal disputes is attached as Exhibit A.

Pursuant to §11.9(f), related to “Factors Affecting Scoring and Eligibility in current and future Application Rounds”, for non-statutory deadlines (including the Readiness Deadline) “an exception to the penalty may be made if the Board or Executive Director, as applicable, makes an affirmative finding setting forth that the need for an extension of the deadline was beyond the reasonable control of the Applicant and could not have been reasonably anticipated.” We understand staff intends to take this item before the board at the January board meeting and we therefore ask for staff’s consideration of the factors below when making its presentation to the board. It is worth noting several members of the Partnership were involved in a 2018 Houston HTC Application and did meet that cycle’s Readiness Deadline.

Beginning in July of 2020, the Partnership became aware of opposition to Campanile on Briar Hollow by adjacent homeowners’ associations. Brian Kilpatrick, Esq. of Wilson Cribbs & Goren contacted TDHCA expressing opposition to Campanile on Briar Hollow on behalf of Briar Hollow Townhomes Association (“BHTA”) and The Park Square Co-Owner’s Association, Inc (“PSCA”). TDHCA considered both matters presented by Mr. Kilpatrick resolved and approved the award of housing tax credits at the July 23, 2020 board meeting. Following the board meeting, the Partnership met with PSCA and communicated with BHTA to listen to their concerns. Revisions to the site plan were made in an effort to satisfy the homeowners’ associations.

On October 1, 2020 BHTA filed a petition, application for temporary restraining order and temporary injunction, and discovery request. This dispute is in reference to a 40’ setback agreement, architectural

Lora Myrick

(512) 785-3710

lora@betcohousinglab.com

| 2201 Northland Drive, Austin, Texas 78756 | 812 San Antonio Street, Suite L-14, Austin, Texas 78701 |



restrictions, and landscaping requirements (Exhibit B). The BHTA filing prevented the Partnership from moving forward towards closing. Subsequently, on October 5, 2020 PSCA requested mediation of the dispute regarding an Easement Agreement (Exhibit C). Mediation on November 19, 2020 resulted in the judge declaring an impasse. The Partnership is actively working to resolve the issue through arbitration at a date to be set.

In addition to the legal disputes outlined above, the Partnership was unable to close on all financing proposed for Campanile on Briar Hollow. Specifically, the Partnership applied for and was awarded \$8,500,000 from the City of Houston. The City of Houston has not produced loan documents, which has caused a delay in closing on the remaining financing sources.

The legal disputes and delay in receiving loan documents from the City of Houston are circumstances beyond the reasonable control of the Partnership, and could not have been reasonably anticipated. Given these facts, the Partnership respectfully requests that the Board grant the exception under 10 TAC 11.9(f), and not assess a penalty against members of the Partnership.

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

Sincerely,

Lora Myrick, Principal

BETCO Consulting, LLC

Exhibit A

Campanile on Briar Hollow – Legal Issues Timeline

July 7, 2020	Correspondence (challenge) received by Sharon Gamble (Les Kilday cc'd) from Brian Kilpatrick, Esq of Wilson Cribbs & Goren, PC on behalf of Briar Hollow Townhomes Association (BHTA) alleging violation of 40' building line setback, prohibition of balconies & doors facing BHTA, Notice not provided to BHTA, and inefficient use of public funds.
July 17, 2020	Email from Sharon Gamble to Brian Kilpatrick (Les Kilday cc'd) clearing challenge on notification, stating setback issue doesn't affect eligibility or scoring criteria of the program rules.
TDHCA Board Meeting July 23, 2020	Correspondence received from Brian Kilpatrick on behalf of The Park Square Co-Owner's Association, Inc., as well as public testimony during board meeting alleging failure to provide notice, failure to disclose requirement of vacation/re-platting nor evidence vacation/replat process commenced. Lora Myrick addresses issue of notification via public testimony, states notice was provided as abundance of caution. Lora provided delivery receipt of notification delivered to PSCA. Marni responded the matter was closed.
August 4, 2020	Kildays meet with Park Square Co-Owner's Association. Agree to follow up meeting the next week. No follow up meeting took place.
August 13, 2020	Correspondence received from Reid Wilson of Wilson Cribbs & Goren, PC on behalf of The Park Square Co-Owner's Association, Inc. suggesting it does not appear easement agreement is intended to be adhered to.
August 24, 2020	Response sent to Reid Wilson from Andrea Steel of Coats Rose, P.C. confirming compliance with the easement and desire to cooperate and requesting meeting to discuss.
Aug. 24-Sept. 9, 2020	Various requests received from PSCA asking about plans
September 10, 2020	Follow-up correspondence sent to Reid Wilson from Andrea Steel of Coats Rose, P.C. reasserting rights and willingness to discuss and cooperate.
September 16, 2020	Correspondence (Notice of Violation) received from Brian Kilpatrick on behalf of BHTA to Les Kilday alleging violation of 40' western boundary setback; prohibition of balconies, windows and doors on western façade, potential tree damage
September 21, 2020	Response sent to Brian Kilpatrick from Andrea Steel on behalf of Kildays confirming no violations of BHTA restrictions and expressing intent to comply.

October 1, 2020	BHTA files petition, application for temporary restraining order and temporary injunction and discovery request.
October 5, 2020	Letter from Reid Wilson of Wilson, Cribbs, & Goren PC on behalf of Park Square Co-Owner's Association, Inc. to Andrea Steel of Coats Rose requesting mediation of issues in the easement agreement
October 8, 2020	Letter from Nancy Hamren of Coats Rose, P.C., agreeing to mediation with PSCA and requesting BHTA join, and again expressing intent to comply with covenants and restrictions.
October 13, 2020	Plans submitted to City, included revisions after input from Park Square Co-Owner's Association
November 5, 2020	Kilday Operating and Partnership through Coats Rose, P.C., files answer to BHTA lawsuit, along with counterclaim and requests for discovery (production, interrogatories, admissions)
November 6, 2020	Kilday Operating and Partnership through Coats Rose, P.C., files amended requests for discovery (interrogatories, admissions)
November 10, 2020	Pre-Mediation Demand Letter received from Sara Prasatik of Wilson Cribbs + Goren, PC on behalf of The Park Square Co-Owner's Association, Inc.
November 19, 2020	Mediation scheduled. Judge declares impasse.
November 20, 2020	Nancy Hamren of Coats Rose sends alternate proposal to PSCA's attorneys
December 11, 2020	Status conference with Judge for BHTA matter scheduled

2020-62178 / Court: 190

CAUSE NO. _____

BRIAR HOLLOW TOWNHOUSE
ASSOCIATION, INC.,

Plaintiff

vs.

CAMPANILE ON BRIAR HOLLOW LP,
KILDAY OPERATING LLC, and
JAYMEE JOINT VENTURE,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED ORIGINAL PETITION, APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION,
AND DISCOVERY REQUESTS**

TO THE HONORABLE JUDGE OF THIS COURT:

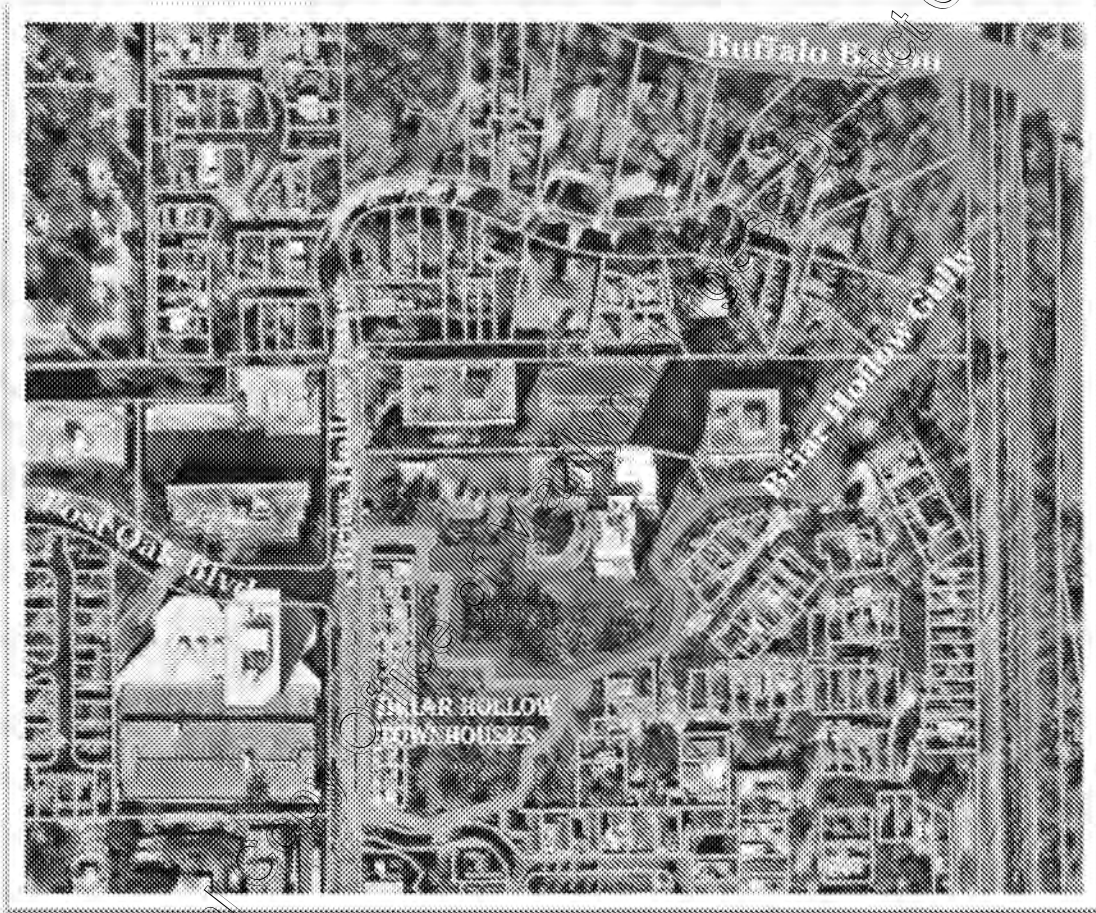
COMES NOW Plaintiff BRIAR HOLLOW TOWNHOUSE ASSOCIATION, INC. ("Plaintiff" or "BHTA") and files this its Verified Original Petition complaining of Defendants CAMPANILE ON BRIAR HOLLOW LP ("CBH"), KILDAY OPERATING LLC ("Kilday"),¹ and JAYMEE JOINT VENTURE ("Jaymee"), and serves the attached Discovery Requests to same; and in support would show the Court as follows:

I.
INTRODUCTION

1. Plaintiff BHTA brings this action to enforce restrictive covenants and enjoin violations thereof resulting from Kilday Defendants' proposed apartment complex development called the Campanile On Briar Hollow (the "Campanile"). Kilday Defendants intend to build the Campanile on a 1.1421-acre tract of land (the "Subject Property") located near the intersection of Briar Hollow Lane and Post Oak Boulevard in Houston's Galleria area.

¹ CBH and Kilday are hereinafter referred to, collectively, as "Kilday Defendants".

The site of the proposed Campanile is heavily-wooded raw land situated mostly within the 100-year flood plain along the banks of Briar Hollow Gully—a tributary to Buffalo Bayou. BHTA is the property owners' association for the Briar Hollow Townhouses located adjacent to the Subject Property. The Subject Property and the Briar Hollow Townhouses are depicted below:



2. Despite knowing that the subject property is encumbered by restrictive covenants that, *inter alia*, impose a 40-foot building line setback and restrict placement of windows, doors, and balconies, Kilday Defendants nevertheless intend to develop the Campanile in a manner that would violate *all* of such restrictions. Kilday Defendants' proposed Campanile development would also violate the terms of a settlement agreement between BHTA and Kilday Defendants' predecessor-in-interest, to which Kilday Defendants

are bound as successors-in-interest. Accordingly, it has become necessary to file this suit to enforce the restrictive covenants and enjoin Kilday Defendants from developing the Campanile on the Subject Property in violation thereof.

II.
DISCOVERY CONTROL PLAN

3. Plaintiff intends to conduct discovery under Level 2 of TEX. R. CIV. P. 190.3. Plaintiff affirmatively pleads this suit is not governed by the expedited actions process in TEX. R. CIV. P. 169.

III.
CLAIM FOR RELIEF

4. In accordance with TEX. R. CIV. P. 47, Plaintiff seeks monetary relief over \$1,000,000 and equitable relief.

IV.
PARTIES

5. Plaintiff BRIAR HOLLOW TOWNHOUSE ASSOCIATION, INC. (hereinafter referred to as "Plaintiff") is a non-profit corporation organized and existing under the laws of the state of Texas.

6. Defendant CAMPANILE ON BRIAR HOLLOW LP is a limited partnership organized and existing under the laws of the state of Texas. It may be served with process through its registered agent, Les Kilday, at 1717 St. James Place, Suite 150, Houston, Texas 77056; or wherever he may be found.

7. Defendant KILDAY OPERATING LLC is a limited liability company organized and existing under the laws of the state of Texas. It may be served with process through its registered agent, Barry J. Palmer, at 9 Greenway Plaza, Suite 1100, Houston, TX 77046; or wherever he may be found.

8. Defendant JAYMEE JOINT VENTURE is a joint venture organized and

existing under the laws of Texas composed of IOW 200, Inc., Vinsteve Investments, Inc., Brett-Pat U.S.A., Inc. and Gahor Investments, Inc. It may be served with process through Herbert N Lackshin, registered agent of venturer Vinsteve Investments, Inc., at 3555 Timmons Lane, Suite 1450, Houston, Texas 77027; or wherever he may be found.

9. Defendants CBH, Kilday, and Jaymee are sometimes referred to hereinafter, collectively, as “Defendants”.

V. **JURISDICTION AND VENUE**

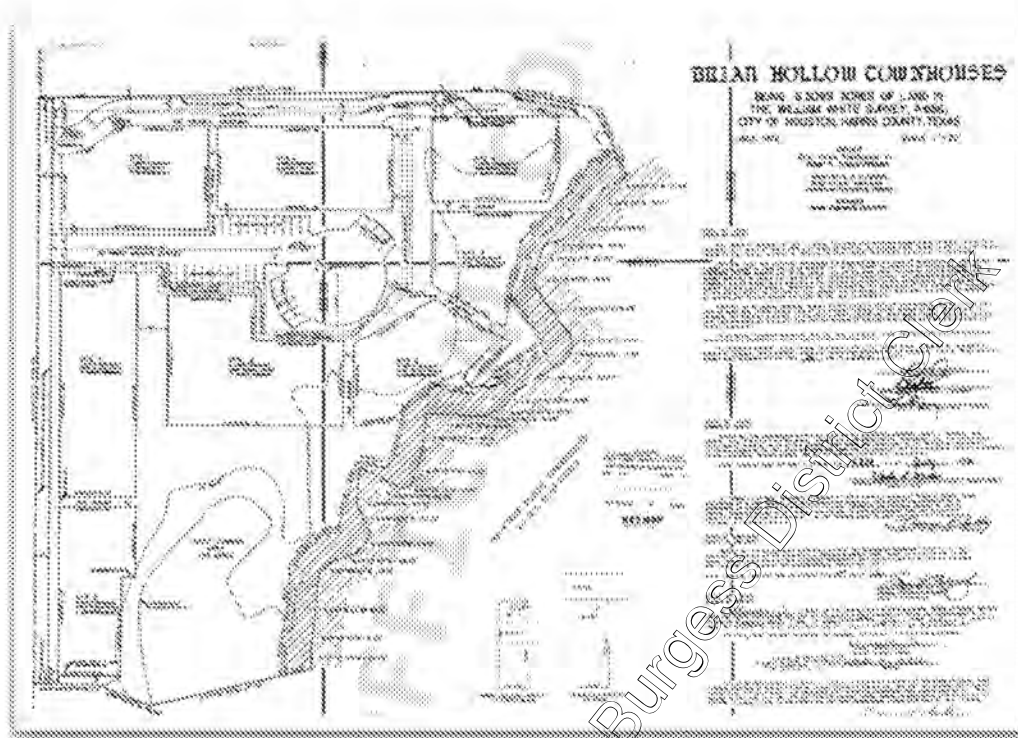
10. This Court has subject-matter jurisdiction over Plaintiff's claims because the amount in controversy exceeds the minimum jurisdictional limit of this Court. Further, this Court has subject-matter jurisdiction over Plaintiff's claims, pursuant to Section 65.021(a) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, because Plaintiff seeks injunctive relief.

11. This Court has personal jurisdiction over Defendants because they are residents of and regularly conduct business in the State of Texas.

12. Venue is proper in Harris County, Texas pursuant to TEXAS CIVIL PRACTICE AND REMEDIES CODE Section 15.011, because the property forming the basis of this action is situated in Harris County, Texas.

VI. **FACTS**

13. In 1972, Briar Hollow Townhouses, Inc. (the “Original Developer”) began developing a residential community called Briar Hollow Townhouses on a 6.3099-acre tract of land situated on Briar Hollow Lane at the intersection of Post Oak Blvd. in Houston's Galleria area. The Original Developer subjected the Property to the terms and conditions of a plat and a Declaration of Covenants, Conditions, and Restrictions providing for the construction of eight buildings containing a total of 39 townhouses with the remaining common areas to be owned by the BHTA, as shown below:



14. The Original Developer successfully built twelve townhomes along the west side of the property fronting Briar Hollow Lane. The remaining 27 units were never built.

15. In or around 1979, West Oak Developments 100, a Texas joint venture ("West Oak") acquired the undeveloped portion of the Briar Hollow Townhouse subdivision. A dispute arose between the BHTA and West Oak because, *inter alia*, West Oak refused to convey the common area to BHTA as required by the plat and Original Declaration. The parties resolved the dispute and entered into an Agreement of Settlement and Compromise (the "Settlement Agreement") on August 15, 1979. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1** and is incorporated herein by reference.

16. Pursuant to the Settlement Agreement, West Oak and BHTA agreed, *inter alia*, to establish final boundary lines for West Oak's and the BHTA's respective properties and then convey property to each other in accordance therewith. In addition, West Oak agreed to "forever bind itself, its successors and assigns to construct no doors, balconies, stairs or similar structures and to construct only kitchen and/or bathroom and/or bedroom windows

(which bedroom windows shall not be larger than five (5) feet by six (6) feet in size) on the facade of the Closer Building which faces the Owners' townhouses." Further, West Oak agreed that it "shall, with respect to the Closer Building, forever bind its successors and assigns to construct such building no closer than forty (40) feet from a point on an eastern boundary line between the West Oak Property and the Association Property, as previously agreed upon by the Association and West Oak at a meeting held on June 26, 1979...."

17. On or around November 8, 1979, Houstex Investments, N.V., a Netherlands Antilles corporation ("Houstex") acquired the Subject Property from West Oak and assumed West Oak's obligations under the Settlement Agreement. On April 1, 1980, Houstex and BHTA executed and filed that certain Declaration of Covenants (the "1980 Declaration") in and under Clerk's File No. G484338 of the Real Property Records of Harris County, Texas. A true and correct copy of the 1980 Declaration is attached hereto as **Exhibit 2** and incorporated herein by reference. The 1980 Declaration provides, in pertinent part, as follows:

[Houstex], its successors and assigns, shall, with respect to the proposed building on TRACT ONE, forever bind itself, its successors and assigns to construct no doors, balconies, stairs or similar structures and to construct only kitchen and/or bathroom and/or bedroom windows (which bedroom windows shall each not be larger than five (5) feet by six (6) feet in size) on the façade of said building which faces the townhouses located on TRACT TWO and owned by the Owners. Notwithstanding the preceding sentence of this paragraph, Declarant may construct one (1) emergency exit door on the ground level of such facade, if, but only if, Declarant is required to do so by any governmental authority having jurisdiction with respect to said building.

[Houstex], its successors and assigns, shall, with respect to said building on TRACT ONE forever bind its successors and assigns to construct said building no closer than forty (40) feet from a certain eastern boundary line between TRACT ONE and the TRACT TWO, as more particularly described on Exhibit "C" attached hereto.

See Exhibit 2 at p. 4.

18. In June 2020, BHTA learned that Kilday Defendants' were planning to

purchase the Subject Property² to develop the Campanile. The BHTA obtained and reviewed copies of the original set of plans for the Campanile and determined that the development would violate the foregoing restrictions. Specifically, the original plans show that the Campanile would have doors, balconies, and windows on the façade of the building facing the BHTA townhouses; and would be built all the way up to the western boundary line in violation of the 40-foot setback. A true and correct copy of Kilday Defendants' original plans are attached hereto as **Exhibit 3** and incorporated herein by reference.

19. BHTA notified Kilday Defendants that the proposed Campanile would violate the above restrictions. After receiving notice from BHTA that the original plans violated the restrictive covenants under the 1980 Declaration, Kilday Defendants revised the plans for the Campanile. But the plan revisions did not cure any violations of the restrictive covenants. Instead, the revised plans seemed to address issues related to an easement agreement with adjacent property owner to the north, namely The Park Square Co-Owners Association.

20. On or around August 27, 2020, Kilday Defendants submitted a Declaration In Support Of Application For City Of Houston Building Permit and a revised site plan. Though the revised site plan still clearly violated the same restrictive covenants as all prior versions of the plans, Kilday Defendants nevertheless falsely represented in the declaration, under penalty of perjury, that **"The Project does not violate the Deed Restrictions, if any, that apply to the Land."** (emphasis included). True and correct copies of Kilday Defendants' declaration and revised site plan are attached hereto as **Exhibit 4** and incorporated herein by reference.

21. On September 23, 2020, BHTA sent formal notice to Kilday Defendants that

² The Subject Property is more particularly described as All of PARK SQUARE CONDOMINIUMS, SECTION TWO (2), a 1.1421 acre subdivision in the William White Survey, Abstract 836, Harris County, Texas according to the map or plat thereof recorded in Volume 322, Page 128 of the Map Records of Harris County, Texas.

the proposed Campanile development violates the restrictive covenants as set forth herein. Despite BHTA's demands, Kilday Defendants have manifested their intent to proceed with building the Campanile in violation of the 1980 Declaration and the Settlement Agreement. It has therefore become necessary to bring this action.

VII.
CAUSES OF ACTION

COUNT ONE: DECLARATORY JUDGMENT

22. Plaintiff incorporates by reference the factual allegations in the foregoing paragraphs as if fully set forth herein verbatim.

23. Pleading in the alternative, but only to the extent necessary to protect its rights, and subject to and without waiving any claims, causes of action, defenses, factual allegations or legal theories pleaded herein, Plaintiff seeks a declaratory judgment, pursuant to the UNIFORM DECLARATORY JUDGMENT ACT and TEXAS CIVIL PRACTICE & REMEDIES CODE §§ 37.001 *et seq.*, declaring the parties' rights and obligations under the 1980 Declaration and Settlement Agreement.

24. As the foregoing circumstances convey, Plaintiff and Defendants are parties interested in a written contract whose rights and legal obligations thereunder are subject to ongoing controversy. Plaintiff therefore invokes the authority of this Court under Section 37.004 of the TEXAS CIVIL PRACTICE & REMEDIES CODE to construe the 1980 Declaration and Settlement Agreement and afford Plaintiff relief as set forth below:

a. Declare that, under the 1980 Restrictions and Settlement Agreement, Defendants and their successors and assigns are prohibited from building any structures in the 40-foot setback area of the Subject Property described in the 1980 Declaration and Settlement Agreement, and that the revised plans for the proposed Campanile attached as Exhibit 4 would violate said restriction;

b. declare that, under the 1980 Restrictions and Settlement Agreement, Defendants and their successors and assigns are prohibited from building a structure on the Subject Property with doors, balconies, stairs or similar structures on the side of the building that faces the Briar Hollow Townhouses, and that the revised plans for the proposed Campanile attached as Exhibit 4 would violate this restriction; and

c. declare that under the 1980 Restrictions and Settlement Agreement, Defendants and their successors and assigns are prohibited from building a structure on the Subject Property with kitchen and/or bathroom and/or bedroom windows (which bedroom windows shall each not be larger than five (5) feet by six (6) feet in size) on the side of the building that faces the Briar Hollow Townhouses, and that the revised plans for the proposed Campanile attached as Exhibit 4 would violate this restriction.

25. Plaintiff seeks recovery of reasonable and necessary attorney's fees and costs from and against all Defendants as are equitable and just pursuant to TEX. CIV. PRAC & REM. CODE § 37.009.

COUNT TWO: BREACH OF CONTRACT / ENFORCEMENT OF RESTRICTIVE COVENANTS

26. Plaintiff incorporates by reference the factual allegations in the foregoing paragraphs as if fully set forth herein verbatim.

27. Pleading in the alternative, if necessary, and without waiving any claims, causes of action, allegations or theories of liability, and while incorporating by reference the factual allegations stated herein, Plaintiff alleges a cause of action against Defendants for breach of contract and enforcement of the restrictive covenants under the 1980 Declaration and Settlement Agreement.

28. BHTA and Houstex were parties to a valid, enforceable contracts; specifically, the Settlement Agreement and 1980 Declaration attached hereto as **Exhibits 1 and 2**,

respectively.

29. Jaymee owns legal title to the Subject Property and thus is bound to comply with the 1980 Declaration and the Settlement Agreement as the successor-in-interest of Houstex. In the event and to the extent that Jaymee has authorized Kilday Defendants to commence work on the Campanile before conveying its interest to Kilday Defendants, Jaymee has repudiated the Settlement Agreement and 1980 Declaration and thus has committed an anticipatory breach thereof.

30. Upon information and belief, Kilday Defendants own an equitable interest in the Subject Property as the buyer under a purchase and sale agreement. In the alternative, upon information and belief, Kilday Defendants are currently or are soon-to-be the owner of legal title to the Subject Property. Kilday Defendants are therefore bound to comply with the 1980 Declaration and Settlement Agreement as a successor-in-interest.

31. Plaintiff fully performed all contractual obligations under the 1980 Declaration and Settlement Agreement.

32. Kilday Defendants have repudiated and anticipatorily breached the Settlement Agreement and 1980 Declaration by, *inter alia*, manifesting their intent to build the Campanile in a manner that violates the restrictive covenants therein.

33. All conditions precedent to Kilday Defendants' performance were satisfied or occurred before Kilday Defendants' breach.

34. Plaintiff therefore seeks specific performance and injunctive relief to enforce the terms of the Settlement Agreement and 1980 Declaration. In the alternative, in the unlikely event that Kilday Defendants are permitted to build the Campanile in violation of the restrictive covenants, BHTA seeks recovery of statutory damages pursuant to TEX. PROP. CODE § 202.004(c) and actual damages within the jurisdictional limits of this Court.

VIII.
APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

35. Plaintiff respectfully requests that the Court issue a temporary restraining order and temporary injunction, pursuant to TEX. CIV. PRAC. & REM. CODE § 65.011(1),(3) and (5), enjoining Defendants, including their successors and assigns, from violating the restrictive covenants as set forth herein. Under TEX. CIV. PRAC. & REM. CODE § 65.011, a court may issue an injunction: (1) “[w]hen the applicant is entitled to the relief demanded, and all or part of the relief requires the restraint of some act prejudicial to the applicant”; (2) “to preserve the subject matter of the suit until the suit is resolved by a judgment”; and (3) “[w]hen irreparable injury to real or personal property is threatened, irrespective of any remedy at law.”

36. A temporary injunction is the proper method of maintaining the status quo while the applicability of a restrictive covenant is being finally determined. *Gunnels v. No. Woodland Hills Community Ass'n*, 563 S.W.2d 334, 338 (Tex. Civ. App.—Houston [1st Dist.] 1978, no writ); *see also Baton v. Key Production Co.*, 315 S.W.2d 59, 62 (Tex. Civ. App.—Texarkana 1958, ref. n.r.e.). It is not essential to obtaining a temporary injunction to prove that a breach of the restrictive covenant has already occurred, but only that a breach is intended. *Guajardo v. Neece*, 758 S.W.2d 696, 698 (Tex. App.—Fort Worth 1988, no writ); *see also Bankler v. Vale*, 75 S.W.3d 29 37-39 (Tex. App.—San Antonio, 2001, no pet. h.). To enjoin the performance of an act that would breach a restrictive covenant, a plaintiff is only required to prove that the defendant “intends to do an act that would breach the restrictive covenant.” *Jim Rutherford Invs., Inc. v. Terramar Beach Cmty. Ass'n*, 25 S.W.3d 845, 849 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

37. Here, the evidence will show that Kilday Defendants intend to build the Campanile (as shown in the latest revised plans attached hereto as **Exhibit 4**) in violation of

the 40-foot setback as well as the prohibition on doors, windows, balconies, and similar structures facing the BHTA townhouses.

38. A temporary restraining order and temporary injunction are proper because the Settlement Agreement and 1980 Declaration plainly and unambiguously prohibit building within the 40-foot setback area and restrict placement of windows, doors and balconies facing the Briar Hollow Townhouses. But even assuming, *arguendo*, the restrictive covenants are ambiguous in some way, the Court must liberally construe them to give effect to their purposes and intent. TEX. PROP. CODE § 202.003(a). The purpose and intent of the 40-foot setback is to maintain a natural, undisturbed buffer zone between the two properties. Further, the purpose and intent of the restriction on placement of windows, doors, and balconies is to maintain privacy. It is, therefore, probable that Plaintiff will prevail in a trial on the merits.

39. If Plaintiff's application for temporary restraining order and temporary injunction is not granted, harm is imminent because the Kilday Defendants will begin clearing mature trees and performing other site work within the 40-foot setback area.

40. Because Plaintiff is seeking a temporary restraining order to enforce a restrictive covenant, irreparable harm is not required to be shown. But irreparable harm will occur if Kilday Defendants are not enjoined from clearing mature trees and performing other site work within the 40-foot setback area, which would permanently destroy the natural, undisturbed buffer zone that was intended to be preserved by imposing the restrictive covenants.

41. Plaintiff has no adequate remedy at law because damages are incalculable if the Kilday Defendants are allowed to start construction on the Subject Property.

42. Plaintiff is ready and willing to post a bond as required by Texas law. Plaintiff requests that the Court set bond for a nominal amount not to exceed \$500.00 for the

temporary restraining order and again for the temporary injunction. This amount is appropriate because the proposed Campanile clearly and undeniably violates the restrictive covenants.

43. Plaintiff is therefore entitled to a temporary restraining order, temporary injunction, and permanent injunction enjoining Defendants from building the Campanile or performing any other work on the Subject Property in violation of the restrictive covenants.

44. Plaintiff respectfully requests the Court to set its application for temporary injunction for a hearing and, after said hearing, issue a temporary injunction to enjoin Defendants from violating the restrictive covenants pending the trial of this cause. Plaintiff further requests the Court to issue a permanent injunction, after a trial on the merits, enjoining Kilday Defendants, including their successors and assigns, from violating the restrictive covenants as set forth herein.

IX.
CONDITIONS PRECEDENT

45. Pursuant to Rule 54 of the TEXAS RULES OF CIVIL PROCEDURE, all conditions precedent for Plaintiff to recover have been performed, have occurred, or were waived or excused.

X.
NOTICE OF INTENT TO RELY UPON UNFILED DISCOVERY

46. In accordance with Texas Rule of Civil Procedure 166a(d), Plaintiff hereby provides notice of its intent to use discovery product(s) not on file with the clerk of the court as evidence in any pretrial hearings and at trial.

XI.
JURY DEMAND

47. Plaintiff demands a jury trial on all of the allegations in Plaintiff's Verified Original Petition, and all amendments and supplements thereto, and all of the defenses raised

by Defendants in their original answers, and all supplements and amendments thereto. A jury fee in the appropriate amount is being paid contemporaneously with the filing of Plaintiff's Verified Original Petition.

XII.
REQUEST FOR DISCLOSURE

48. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, all Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE. TEX. R. CIV. P. 194.1.

XIII.
**FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION,
AND FIRST REQUEST FOR ADMISSIONS**

49. Pursuant to Rules 196, 197, and 198 of the TEXAS RULES OF CIVIL PROCEDURE, within fifty (50) days of the service of this request, Plaintiff requests that Kilday Defendants serve answers, responses and produce the documents and tangible things requested in *Plaintiff's First Set of Interrogatories, First Request for Production, and First Request for Admissions*, attached to this Original Petition as **Exhibit 5**.

XIV.
DEMAND FOR PRESERVATION OF EVIDENCE

50. Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the subject matter of this lawsuit, including statements, photographs, videotapes, surveillance tapes, audiotapes, business records, partnership or corporate records, audits, regulatory records or communications, contracts, leases, bills, estimates, invoices, checks, correspondence, investigation reports, policies, protocols, personal information, memoranda, facsimiles, email, cellular telephone records, voice mail, text messages, and any electronic image or information related to the referenced transactions or any damages resulting therefrom. Failure to maintain such items will constitute "spoliation" of the evidence.

XV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendants be cited to appear and answer herein and that upon final hearing Plaintiff be awarded a judgment as follows:

a. render a declaratory judgment declaring—

i. that, under the 1980 Restrictions and Settlement Agreement, Defendants and their successors and assigns are prohibited from building any structures in the 40-foot setback area of the Subject Property described in the 1980 Declaration and Settlement Agreement, and that the revised plans for the proposed Campanile attached as Exhibit 4 would violate said restriction;

ii. that, under the 1980 Restrictions and Settlement Agreement, Defendants and their successors and assigns are prohibited from building a structure on the Subject Property with doors, balconies, stairs or similar structures on the side of the building that faces the Briar Hollow Townhouses, and that the revised plans for the proposed Campanile attached as Exhibit 4 would violate this restriction; and

iii. that under the 1980 Restrictions and Settlement Agreement, Defendants and their successors and assigns are prohibited from building a structure on the Subject Property with kitchen and/or bathroom and/or bedroom windows (which bedroom windows shall each not be larger than five (5) feet by six (6) feet in size) on the side of the building that faces the Briar Hollow Townhouses, and that the revised plans for the proposed Campanile attached as Exhibit 4 would violate this restriction.

b. issue a temporary and permanent injunction enjoining Defendants and their successors and assigns from building the Campanile as shown in the revised plans attached as Exhibit 4, or building any other structures that would violate the 1980 Declaration and

Settlement Agreement;

c. award Plaintiff reasonable and necessary attorney's fees and costs as are equitable and just pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009 and TEX. PROP. CODE § 5.006; and

d. grant such other and further relief, both at law and in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

WILSON, CRIBBS + GOREN, P.C.

By: /s/ Brian B. Kilpatrick

Brian B. Kilpatrick, TBN 24074533

Email: bkilpatrick@wcglaw.com

Scot Clinton, TBN 24045667

Email: scClinton@wcglaw.com

Sara M. Prasatik, TBN 24088251

Email: sprasatik@wcglaw.com

2500 Fannin Street

Houston, Texas 77002

Telephone (713) 222-9000

Facsimile (713) 229-8824

ATTORNEYS FOR PLAINTIFF

UNSWORN DECLARATION OF JACK P. ECKELS

STATE OF TEXAS

§
§
§

COUNTY OF HARRIS

My name is Jack P. Eckels, my date of birth is January 25, 1948, and my address is 45 Briar Hollow Lane, No. 10, Houston, Texas 77027-9311. I declare under penalty of perjury that the facts stated in this document are true and correct:

1. I am the president of Briar Hollow Townhouse Association, Inc.
2. I have read the attached Plaintiff's Verified Original Petition, Application for Temporary Restraining Order and Temporary Injunction. The facts stated in it are within my personal knowledge and are true and correct."

Executed in Harris County, State of Texas on October 1, 2020.



JACK P. ECKELS

Unofficial Copy Office of Marilyn Burgess District Clerk

AGREEMENT OF SETTLEMENT AND COMPROMISE

This Agreement of Settlement and Compromise (the "Agreement"), dated as of the 15th day of August, 1979, by and among WEST OAK DEVELOPMENTS 100, a Texas joint venture ("West Oak"); BRIAR HOLLOW TOWNHOUSE ASSOCIATION, a Texas non-profit corporation (the "Association"); and all of the townhouse owner members of the Association, whose names and places of residence are set forth in Exhibit "A" annexed hereto (the "Owners").

PRELIMINARY STATEMENT

The Owners are record title holders in and to twelve (12) residential townhouses (the "Owners' Property"), and the Association is the record title holder in and to certain common area property described in the series of deeds annexed hereto as Exhibit "B" (the "Association Property"), which together comprise a portion of a residential townhouse development known as Briar Hollow Townhouses (the "Project"). The original developer of the Project was Briar Hollow Townhouses, Inc., a Texas corporation (the "Original Developer"). The Original Developer subjected the Project to the terms and provisions of a plat (the "Plat") a copy of which is annexed hereto as Exhibit "C", and a Declaration of Covenants, Conditions and Restrictions (the "Declaration"), a copy of which is annexed hereto as Exhibit "D". The Plat and the Declaration required the Original Developer to develop a project composed of thirty-nine (39) residential townhouses and certain common property to be owned by the Association. In addition, agents and representatives of the Original Developer made certain

EXHIBIT

1

representations and warranties, both verbal and written, in the course of the sale of each townhouse to the Owners with respect to the nature of the Project when complete, the plans and specifications of the Project and the quality and workmanship of the materials and manner of construction of the Project. All parties hereto acknowledge and agree that there presently exist unresolved issues between the Original Developer and the Owners regarding alleged numerous breaches by the Original Developer of such representations and warranties, including the Original Developer's failure to complete the development as represented, its failure to construct the individual townhouses and common elements in accordance with the represented plans and specifications and its failure to construct the individual townhouses and the common elements with the quality materials and in as good and workmanlike manner as represented. In addition, all parties hereto acknowledge and agree that the Original Developer breached its obligation, as set forth in the Plat and in the Declaration, to convey the balance of the common area property to the Association. The Association and the Owners allege that, as a result of the Original Developer's alleged breach of the foregoing and numerous other representations, warranties and obligations, the Association and the Owners have suffered and are continuing to suffer substantial injury and damage and diminution of the value of the Owners' Property and the Association Property. All parties hereto acknowledge and agree that it is in their mutual interest to finally and equitably compromise, resolve and dispose of the alleged breaches of

of representations, warranties and obligations made to the Owners and to the Association and to finally and forever separate the Owners' Property and the Association Property (as modified by this Agreement) from the remaining portions of the Project which are to be acquired by West Oak (the "West Oak Property").

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties hereto agree as follows:

A. West Oak's Obligations.

- (1) West Oak shall pay to the Association the sum of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), which sum shall be paid by West Oak and collected by the Association in cash, cashier's check or certified check simultaneously with West Oak's purchase of the West Oak Property.
- (2) West Oak shall, at its expense, establish a final boundary line between the West Oak Property and the Association Property. Such final boundary line shall be as previously agreed upon and as reflected in the documents supplied by West Oak to the Association on Friday, July 13, 1979 (the "July 13, 1979 Documents"), a copy of which is annexed hereto as Exhibit "E". In order to establish such agreed upon final boundary line, the Association and West Oak shall, within 30 business days following West Oak's purchase of

the West Oak property, exchange certain property owned by each of them and shall deliver general warranty deeds to each other in substantially the forms annexed hereto as Exhibit "F".

- (3) Subsequent to the establishment of a final boundary line between the Association Property and the West Oak Property, West Oak shall do the following:
 - (a) West Oak shall, at its sole expense, perform special grading of the Association Property, as more particularly described in the July 13, 1979 Documents;
 - (b) West Oak shall, at its sole expense, preserve two certain pine trees located on West Oak's side of the northernmost northerly boundary line between the West Oak Property and the Association Property; and
 - (c) West Oak shall, at its sole expense, erect along a portion of the final boundary line between the West Oak Property and the Association Property (which portion shall be mutually agreed upon by West Oak and the Association) such road curbing as specified by West Oak and as more particularly described in the July 13, 1979 Documents, and upon completion, such road curbing shall be the property of the Association.
- (4) West Oak shall, at its sole expense, extend to a location on the Association Property (which location

shall be mutually agreed upon by West Oak and the Association) a suitable cable from a television antenna to be located atop West Oak's proposed building more nearly adjacent to the Association Property (the "Closer Building"). West Oak shall permit all present and future Owners to connect any and all necessary wires to such cable and to utilize such antenna for the sole and exclusive use of not more than forty-eight (48) television sets owned by the Owners. West Oak shall, as part of its condominium regime or any other restriction to which it may subject the West Oak Property, provide that none of the Owners, nor any future Owner, nor the Association shall ever be assessed a fee or cost of any type for exercising the right granted herein to so utilize such cable and such antenna.

- (5) West Oak shall, at no cost to the Association or to the Owners, grant to the Association and its designees, including its employees and contractors, a reasonable right of access (by way of easement or otherwise, so long as such manner of access is mutually agreed upon by West Oak and the Association) across a portion of the West Oak Property as may be designated by West Oak to construct a pool and/or other improvements on the Association Property, with such right of access to continue for a reasonable period of time to be mutually agreed upon by West Oak and the Association, but in any event, not to exceed eighteen (18) months from the date of West Oak's acquisition of the West Oak Property.

(6) West Oak shall, with respect to the Closer Building, forever bind itself, its successors and assigns to construct no doors, balconies, stairs or similar structures and to construct only kitchen and/or bathroom and/or bedroom windows (which bedroom windows shall not be larger than five (5) feet by six (6) feet in size) on the facade of the Closer Building which faces the Owners' townhouses. West Oak shall, with respect to the Closer Building, forever bind its successors and assigns to construct such building no closer than forty (40) feet from a point on an eastern boundary line between the West Oak Property and the Association Property, as previously agreed upon by the Association and West Oak at a meeting held on June 26, 1979, and more particularly described in the survey annexed hereto as Exhibit "G".

B. Obligations of the Owners and of the Association.

(1) The Owners and the Association shall execute or cause to be executed on their behalf all necessary documents presented to them by West Oak, including such documents required for the purpose of modifying the Plat and the Declaration in substantially the forms annexed hereto as Exhibit "H", to establish the final boundary line between (a) the portion of the Project which shall belong to the Owners and to the Association and shall continue to be governed by the terms and provisions of the Plat and the Declaration,

and (b) the portion of the Project owned by West Oak which, it being hereby expressly agreed, shall not, at any time, be governed by the terms and provisions of the Plat or the Declaration.

(2) Within five (5) business days following the delivery of this Agreement into escrow with Capital Title Company, Houston, Texas ("Capital Title"), each Owner whose townhouse is subject to an outstanding lien or encumbrance shall deliver to the holder of such lien or encumbrance (the "Lienholder") for its review all necessary documents presented by West Oak for execution by such Lienholder, and each such Owner shall utilize his best efforts to cause his respective Lienholder to execute such documents on or before five (5) business days following such delivery.

C. Survival of Obligations.

As among the parties hereto, the obligations set forth herein shall survive the execution of this Agreement.

D. Nullification.

This Agreement shall become null and void and of no further effect if West Oak does not comply in full with the terms of Paragraph (A)(1), above, or if the Owners and the Association do not comply in full with the terms of Paragraphs (B)(1) and (B)(2) above or if Capital Title does not timely receive all fully executed (by Owners and Lienholders, if required) documents required for modifying the Plat and the Declaration.

In addition, this Agreement shall become null and void and of no further effect, and this Agreement and any and all documents executed in accordance with its terms and delivered into escrow pursuant to the Escrow Agreement shall be returned to the Association, if West Oak shall not have complied in full with the terms of Paragraph (A)(1) above on or before October 31, 1979. The Board of Directors of the Association, in its sole discretion, may grant a written request from West Oak for an additional period of thirty (30) days following October 31, 1979, for West Oak to comply in full with the terms of Paragraph (A)(1) above. Thereafter, the Board of Directors of the Association may grant separate written requests from West Oak for additional successive thirty-day periods for West Oak to comply in full with the terms of Paragraph (A)(1) above, but only if all the Owners have joined in each such grant of an additional successive thirty-day period.

E. Escrow.

Within 10 business days following the execution of this Agreement by all parties hereto, the Association shall cause an executed original hereof to be delivered into escrow with Capital Title in accordance with an escrow agreement (the "Escrow Agreement") substantially in the form annexed hereto as Exhibit "I". Within 3 business days following the execution of all necessary documents by his Lienholder, each Owner shall deliver such documents into escrow pursuant to the Escrow Agreement. All parties hereto agree that neither this Agreement nor any of the documents executed in accordance with its terms and delivered into escrow pursuant to the Escrow Agreement shall be delivered out of escrow to West Oak prior to West Oak's delivery into escrow of all of the funds described in Paragraph (A) (1) above.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

WEST OAK DEVELOPMENTS 100

By: *L. Cassal*

BRIAR HOLLOW TOWNHOUSE ASSOCIATION

By: *Fredrick D. Demetree*
President

Attest: *[Signature]*
Secretary

OWNERS:

SPOUSES:

1. Patricia Anderson

2. Robert B. Breen

3. L. C. Breen

4. Raymond Breen

5. Robert Breen

6. Meredith D. Dunstede

7. L. C. Breen

8. Raymond Breen

9. Robert Breen

10. Robert Breen

11. Conrad Cutler

12. Robert R. Breen

Janet Bacon

Sandra Lambrey

Ernie E. Dunstede

Sandra Lambrey

Jessie M. Brady

Jan Shley

Betty F. Breen

6484338

APR-180 24450 4 034376 LS B P9 27.16

Rest

DECLARATION OF COVENANTS

154-89-2027

THE STATE OF TEXAS

§
§
§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS

THAT, WHEREAS, HOUSTEX INVESTMENTS, N.V., a Netherlands Antilles corporation (hereinafter called the "Declarant"), is the owner of all that certain real property located in Harris County, Texas, described on Exhibit "A" attached hereto (hereinafter referred to as "TRACT ONE");

WHEREAS, BRIAR HOLLOW TOWNHOUSE ASSOCIATION, (the "Association"), a Texas non-profit corporation, is the owner of all that certain real property located in the City of Houston, County of Harris, State of Texas, referred to herein as TRACT TWO, and which is more particularly described on Exhibit "B" attached hereto;

UNOFFICIAL COPY

WHEREAS, the Declarant is one of the Assignees and successors in interest to West Oak Developments 100, a Texas joint venture ("West Oak"), and Declarant has obligated itself to perform certain of the obligations of West Oak pursuant to that one certain Agreement of Settlement and Compromise (the "Agreement") dated as of August 15, 1979, by and among West Oak, the Association, and all of the townhouse owner/members of the Association (the "Owners"); and

WHEREAS, the Declarant will hold and convey all or part of TRACT ONE subject to certain restrictive covenants as hereinafter set forth;



154-89-2028

NOW, THEREFORE, it is hereby declared that TRACT ONE as described on Exhibit "A" attached hereto shall be held, sold, and conveyed subject to the following covenants which are for the purpose of complying with those obligations of West Oak which have been undertaken by Declarant, and which covenants shall run with the real property and shall be binding on all parties having any right, title or interest in or to TRACT ONE or any part thereof, and their heirs, successors, and assigns, and which covenants shall inure to the benefit of the Association, its successors and assigns, and to each of the Owners, and their legal representatives, heirs, successors and assigns.

ARTICLE 1

RESTRICTIVE COVENANTS

Declarant shall, at its sole expense, extend to a location on TRACT TWO (which location shall be mutually agreed upon by the Declarant and the Association) a suitable cable from a television antenna to be located atop Declarant's proposed building more nearly adjacent to TRACT TWO. Declarant, prior to the acquisition and erection of any such television antenna on and extension of any such cable from said proposed building, shall provide the Association with a written technical description of such television antenna and cable which Declarant then proposes to acquire to comply with its obligations set forth in the preceding sentence of this paragraph. The Association, in its sole discretion, may disapprove either or both of such proposed television antenna and cable by advising

154-89-2020

Declarant in writing within fifteen (15) days of the Association's objections thereto. In the event of such disapproval by the Association, Declarant shall attempt in good faith to satisfy all reasonable objections of the Association to either or both of such proposed television antenna and cable, including without limitation any objections to risk of damage or injury or poor television reception from the use of such television antenna and cable. Declarant shall permit all present and future Owners to connect any and all necessary wires to such cable at its location on TRACT TWO and to utilize such antenna for the sole and exclusive use of not more than forty-eight (48) television sets owned by the Owners. Declarant shall, as part of its condominium regime or any other restriction to which it may subject TRACT ONE provide that none of the Owners, nor any of their heirs, successors or assigns, nor the Association, nor its successors or assigns, shall ever be assessed a fee or cost of any type for exercising its right granted herein to so utilize such cable and such antenna. So long as Declarant shall have complied with all the foregoing obligations set forth in the preceding sentences of this paragraph, Declarant shall not be (i) liable for poor television reception nor for any damage or injury to the property of the Owners, their heirs, successors or assigns, nor to the Association, its successors or assigns, proximately caused by Declarant's compliance with its obligations set forth in the preceding sentences of this paragraph; or (ii) obligated to replace any such television antenna or cable.

154-89-2030

Declarant, its successors and assigns, shall, with respect to the proposed building on TRACT ONE, forever bind itself, its successors and assigns to construct no doors, balconies, stairs or similar structures and to construct only kitchen and/or bathroom and/or bedroom windows (which bedroom windows shall each not be larger than five (5) feet by six (6) feet in size) on the facade of said building which faces the townhouses located on TRACT TWO and owned by the Owners. Notwithstanding the preceding sentence of this paragraph, Declarant may construct one (1) emergency exit door on the ground level of such facade, if, but only if, Declarant is required to do so by any governmental authority having jurisdiction with respect to said building.

Declarant, its successors and assigns, shall, with respect to said building on TRACT ONE forever bind its successors and assigns to construct said building no closer than forty (40) feet from a certain eastern boundary line between TRACT ONE and the TRACT TWO, as more particularly described on Exhibit "C" attached hereto.

ARTICLE 2

GENERAL PROVISIONS

Enforcement. The Declarant, its successors or assigns, the Association, its successors or assigns, and any of the Owners, their legal representatives, heirs, successors or assigns, shall have the right to enforce, by any proceeding at law or in equity, the covenants now imposed by the provisions of this Declaration. Failure to enforce either of the covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter.

154-89-2031

Severability. Invalidation of one of the foregoing covenants by judgment or court order shall in no way effect the other covenant, and the other covenant shall remain in full force and effect.

Duration. The Covenants of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Association and each of the Owners, and their respective legal representatives, heirs, successors and assigns, and shall be effective for so long as the Owners and the Association, and their respective legal representatives, heirs, successors and assigns continue to use TRACT TWO for common areas related to residential townhouses, unless otherwise agreed.

EXECUTED by the said Declarant, this 1st day of April, 1980.

HOUSTEX INVESTMENTS, N.V.

By: _____

[Handwritten signature]

[Handwritten initials]

108

COPY

154-89-2032

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared JULIAN M. MASS, JR., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said HOUSTEX INVESTMENTS, N.V., a Netherlands Antilles corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 1st day of April, 1980.

Patricia Hillman
NOTARY PUBLIC in and for
HARRIS County, TEXAS

NOTARY PUBLIC in Harris County, Texas
My Commission Expires October 24, 1981

FILED
APR 1 3 41 PM '80
Patricia Hillman
COUNTY CLERK
HARRIS COUNTY, TEXAS

Return to:
Parker Moss
2100 Clewley Greenway Plaza
Houston 77046
Parker Moss

154-89-2033

EXHIBIT "A"

(TRACT ONE)

BEING 1.331 acres (57,978 square feet) of land out of a 6.3099 acre tract out of Lots Nine and Eleven of the Roy B. Nichols Subdivision in the William White 1/3 League. Said Roy B. Nichols Subdivision is of record in Volume 321, Page 432 of the Harris County Map Records, Harris County, Texas. Said 1.331 acre tract is further described by metes and bounds as follows:

BEGINNING at a point for a northwest corner of this tract from whence the northwest corner of said 1.331 acre tract bears N 01° 21' 00" E, 30.82 feet, N 88° 39' 00" W, 135.00 feet and N 01° 21' 00" E, 135.89 feet;

THENCE S 89° 56' 31" E, 126.60 feet to a point for a corner of this tract;

THENCE N 00° 03' 29" E, 25.33 feet to a point for a corner of this tract;

THENCE S 89° 56' 31" E, 133.33 feet to a point for a corner of this tract;

THENCE S 00° 03' 29" W, 88.01 feet to a point for a corner of this tract;

THENCE S 89° 56' 31" E, 137.04 feet to a point in the centerline of Briar Hollow Gully for a corner of this tract;

THENCE along the centerline of said Gully as follows:

S 35° 52' 30" E, 26.64 feet;

S 10° 02' 10" E, 15.10 feet;

S 31° 53' 10" W, 13.09 feet;

154-89-2034

S 57° 41' 00" W, 62.94 feet;

S 33° 37' 50" W, 16.58 feet;

S 62° 42' 40" W, 24.55 feet;

N 87° 23' 30" W, 60.05 feet;

S 08° 08' 20" W, 33.78 feet to a Point being the most southerly southeast corner of this tract;

THENCE S 88° 39' 00" W, 133.88 feet to a point for a corner of this tract;

THENCE N 01° 21' 00" E, 35.00 feet to a point for a corner of this tract;

THENCE N 88° 39' 00" W, 87.00 feet to a point for a corner of this tract;

THENCE N 01° 21' 00" E, 135.00 feet to a point for a corner of this tract;

THENCE N 88° 39' 00" W, 43.00 feet to a point for a corner of this tract;

THENCE N 01° 21' 00" E, 24.18 feet to the POINT OF BEGINNING and containing 1.331 acres of land more or less.

154-89-2035

EXHIBIT "B"

TRACT TWO

BEING a tract of land in the William White Survey, A-836, City of Houston, Harris County, Texas and being a portion of BRIAR HOLLOW TOWNHOUSES, a plat recorded in Volume 196, Page 109, of the Map Records of Harris County, Texas, and being further described by metes and bounds as follows:

BEGINNING at the southwest corner of the herein described tract, being the intersection of the south line of the said BRIAR HOLLOW TOWNHOUSES with the east line of the Briar Hollow Lane 45 foot right of way, as shown on the plat of said BRIAR HOLLOW TOWNHOUSES:

THENCE N 01° 21' 00" E 472.16 feet along the east line of the said Briar Hollow Lane 45 foot right of way to the northwest corner of the herein described tract;

THENCE S 88° 39' 00" E 120.00 feet to the most northerly northeast corner of the herein described tract;

THENCE S 01° 21' 00" W 55.00 feet to a point for a corner of this tract;

THENCE S 88° 39' 00" E, 43.00 feet to a point for a corner of this tract;

THENCE S 01° 21' 00" E, .135.00 feet to a point for a corner of this tract;

THENCE S 88° 39' 00" E 87.00 feet to a point for a corner of this tract;

THENCE S 01° 21' 00" E, 35.00 feet to a point for a corner of this tract;

154-89-2036

THENCE S 88° 39' 00" E 133.88 feet to the most easterly north-east corner of the herein described tract, being on the centerline of a Harris County Flood Control District easement as shown on the plat of the said BRIAR HOLLOW TOWNHOUSES:

THENCE following the meanders of the centerline of the said Harris County Flood Control District easement, being the east line of the said BRIAR HOLLOW TOWNHOUSES,

S 08° 08' 20" W 36.07 feet to an angle point;

S 19° 05' 10" W 34.23 feet to an angle point;

S 65° 27' 30" W 10.47 feet to an angle point;

N 62° 21' 10" W 48.56 feet to an angle point;

S 05° 40' 10" W 37.33 feet to an angle point;

S 24° 33' 15" E 33.25 feet to an angle point;

S 35° 29' 20" W 24.13 feet to an angle point;

S 71° 03' 40" W 30.03 feet to an angle point;

S 50° 46' 30" W 14.14 feet to an angle point;

S 06° 19' 20" W 61.03 feet to an angle point;

S 12° 59' 40" W 09.35 feet to an angle point;

S 02° 07' 00" W 29.76 feet to the southeast corner of the herein described tract and of the said BRIAR HOLLOW TOWNHOUSES:

THENCE S 77° 55' 52" W 171.06 feet along the south line of the south line of the said BRIAR HOLLOW TOWNHOUSES to an angle point;

THENCE N 66° 54' 13" W 58.56 feet along the south line of the said BRIAR HOLLOW TOWNHOUSES to an angle point;

THENCE N 89° 44' 22" W 50.73 feet along the south line of the said BRIAR HOLLOW TOWNHOUSES to the POINT OF BEGINNING, less

154-89-2037

Site 7 and Site 8, as described in the plat recorded in Volume 196, Page 109, of the Map Records of Harris County, Texas, including however three (3) spaces of land, more particularly described in that one certain Correction Warranty Deed recorded in the Real Property Records of Harris County, Texas under County Clerk's File No. E319464 and in the microfilm files of said county under Film Code Reference No. 113-13-2284, on December 6, 1974, of the records of Harris County, Texas.

UNOFFICIAL COPY

EXHIBIT "C"

AN EASTERN BOUNDARY LINE
BETWEEN TRACT ONE AND TRACT TWO

BEING an eastern boundary line of a tract of land in the William White Survey, A-836, City of Houston, Harris County, Texas and being a portion of BRIAR HOLLOW TOWNHOUSES, a plat recorded in Volume 196, Page 109, of the Map Records of Harris County, Texas, and said boundary line being further described by metes and bounds as follows:

BEGINNING at the southwest corner of the herein described tract, being the intersection of the south line of the said BRIAR HOLLOW TOWNHOUSES with the east line of the Briar Hollow Lane 45 foot right of way, as shown on the plat of said BRIAR HOLLOW TOWNHOUSES:

THENCE N 01° 21' 00" E 472.16 feet along the east line of the said Briar Hollow Lane 45 foot right of way to the northwest corner of the herein described tract;

THENCE S 88° 39' 00" E 120.00 feet to the most northerly northeast corner of the herein described tract;

THENCE S 01° 21' 00" W 55.00 feet to a point for a corner of this tract;

THENCE S 88° 39' 00" E, 43.00 feet to a point for a corner of this tract and the northern-most point of said eastern boundary line;

THENCE S 01° 21' 00" E, 135.00 feet to a point for a corner of this tract and the southern-most point of said eastern boundary line.

STATE OF TEXAS }
COUNTY OF HARRIS }

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

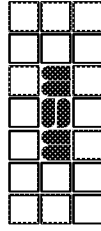
APR 1 1980



Quinta L. Lueck
COUNTY CLERK,
HARRIS COUNTY, TEXAS

CAMPANILE ON BRIAR HOLLOW

A Seniors Community



MUCASEY
&
Associates

Architects

4808 Gibson, Suite 200
Houston, Texas 77007
Tel. (713) 521-1233
Fax (713) 520-1904
Job No. 2006

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Campanile on Briar Hollow

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Project Summary

Apartments:

Type	Description	Qty	Area
A1	One Bedroom, 1 Bath	51	716 s.f.
A2	One Bedroom, 1 Bath (H.C.)	3	716 s.f.
Total One Bedroom Units			
		54	Units
B1	Two Bedroom, 2 Bath	23	1,029 s.f.
B2	Two Bedroom, 2 Bath (H.C.)	2	1,029 s.f.
B3	Two Bedroom, 2 Bath	6	1,075 s.f.
Total Two Bedroom Units			
		31	Units

Apartments Net Rentable Total		85	Units	70,839	s.f.
Amenity Center					
Amenity Center				10,621	s.f.
Amenity Patio				138	s.f.
Unit Patio / Balcony				3,995	s.f.
Total Breezeway & Stairs				18,835	s.f.
Garage				24,401	s.f.
Maintenance				469	s.f.
Other Support Areas				2,322	s.f.
Project Total				131,620	s.f.

Parking:

Parking required :

85 Seniors Units at 0.75 cars = 63.75 cars
 Employee Parking 3.00 cars

Total Parking Required: 66.75 cars

Total Parking Provided:

	Van	H.C.	Standard	Total
Resident Garage Parking (secured):	2	7	47	56 cars
Guest Surface Parking (non-secured):	1	0	10	11 cars
Total Parking Provided:	3	7	57	67 cars

Building Matrix:

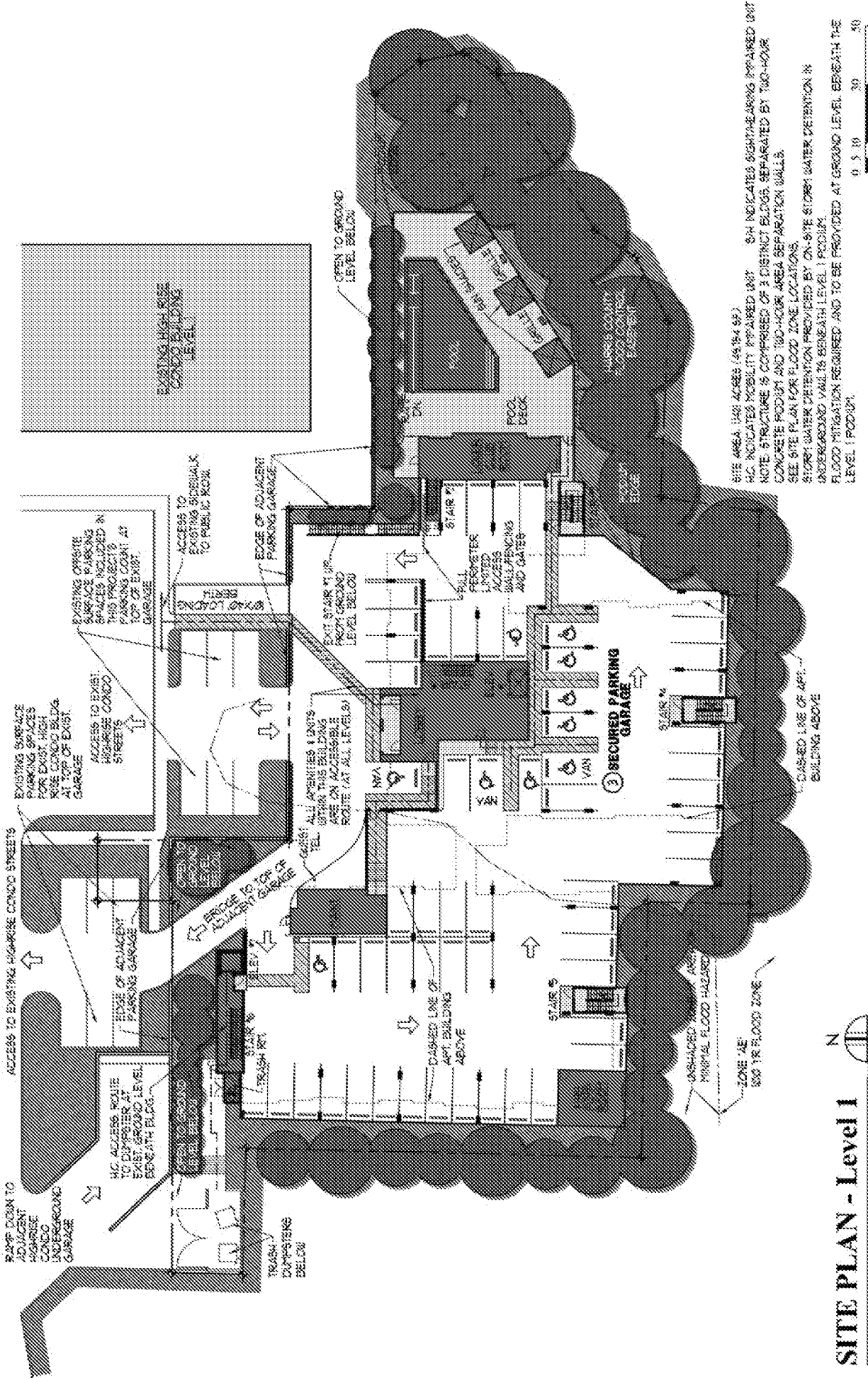
	Bldg. #1	Bldg. #2	Bldg. #3
22 A1 units	29 A1 units	Secured Parking Garage	
2 A2 (HC) units	1 A2 (HC) unit		
8 B1 units	15 B1 units		
2 B2 (HC) units	45 Total units		
6 B3 units			
Amenity Center			
Lobby (1st Flr.)			
Lower Clubroom (1st Flr)			
40 Total units			

SUMMARY

Campanile on Briar Hollow

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.

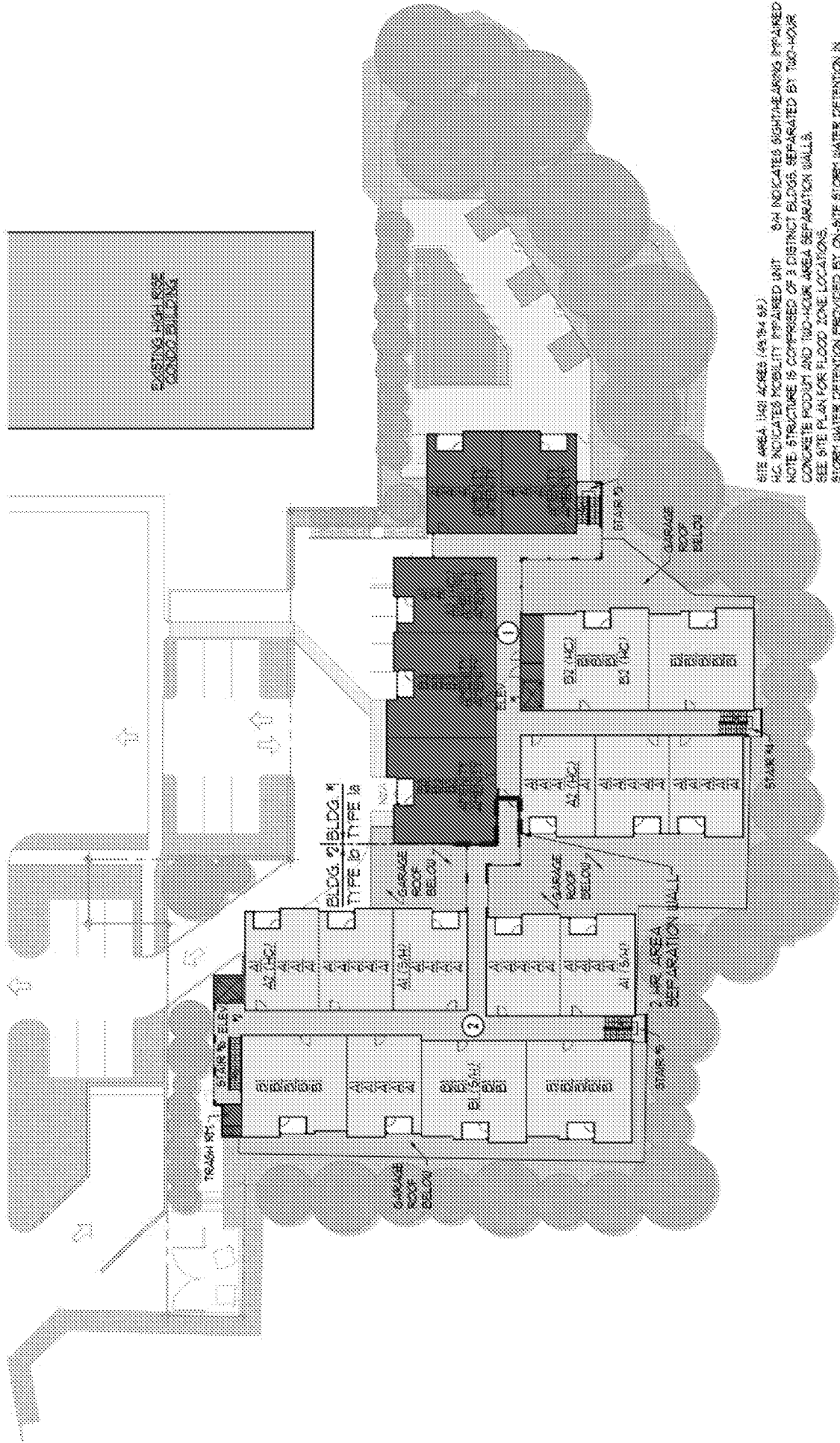


SITE AREA 1482 ACRES (45,184,587)
 H.C. INDICATES MOBILITY IMPAIRED UNIT
 NOTE: STRUCTURE IS COMPOSED OF 3 DISTINCT BLDGS. SEPARATED BY TWO-HOUR
 CONCRETE PERIMETER AND TWO-HOUR AREA SEPARATION WALLS.
 SEE SITE PLAN FOR FLOOD ZONE LOCATIONS.
 STORM WATER DETENTION PROVIDED BY ON-SITE STORM WATER DETENTION IN
 UNDERGROUND VAULTS BENEATH LEVEL 1 PODIUM.
 FLOOD MITIGATION REQUIRED AND TO BE PROVIDED AT GROUND LEVEL BENEATH THE
 LEVEL 1 PODIUM.



SITE PLAN - Level 1
 Campanile on Briar Hollow
 Muncsey & Associates, Architects

TDR/CA Drawings: In accordance with the rules of the Texas Department of Housing and Community Affairs, reports of this development may be subject to change. Including but not limited to, changes in the orientation, ultimately selected and provided.



SITE AREA 1402 ACRES (45,184,887)
 HC INDICATES SIGHTSEEING IMPAIRED UNIT
 NOTE: STRUCTURE IS COMPOSED OF 3 DISTINCT BLDGS. SEPARATED BY TWO-HOUR
 CONCRETE PODIUM AND TWO-HOUR AREA SEPARATION WALLS.
 SEE SITE PLAN FOR FLOOD ZONE LOCATIONS.
 STAIR WATER DETENTION PROVIDED BY ON-SITE STORM WATER DETENTION IN
 UNDERGROUND VAULTS BENEATH LEVEL 1 PODIUM.
 FLOOD MITIGATION REQUIRED AND TO BE PROVIDED AT GROUND LEVEL BENEATH THE
 LEVEL 1 PODIUM.

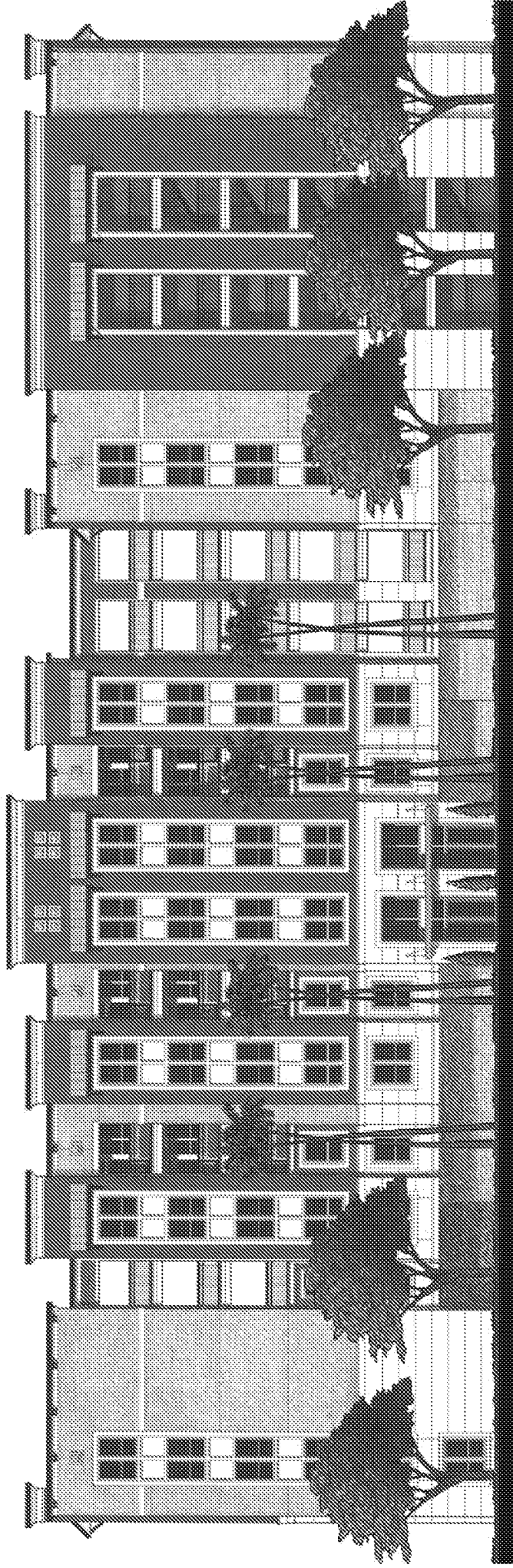


SITE PLAN - Levels 2 thru 6

Campanile on Briar Hollow
 Mucasey & Associates, Architects

TRACVA Disclaimer: In accordance with the rules of the Texas Department of Housing and Community Affairs, projects of this development may be subject to change, including, but not limited to, changes in the densities ultimately released and provided.

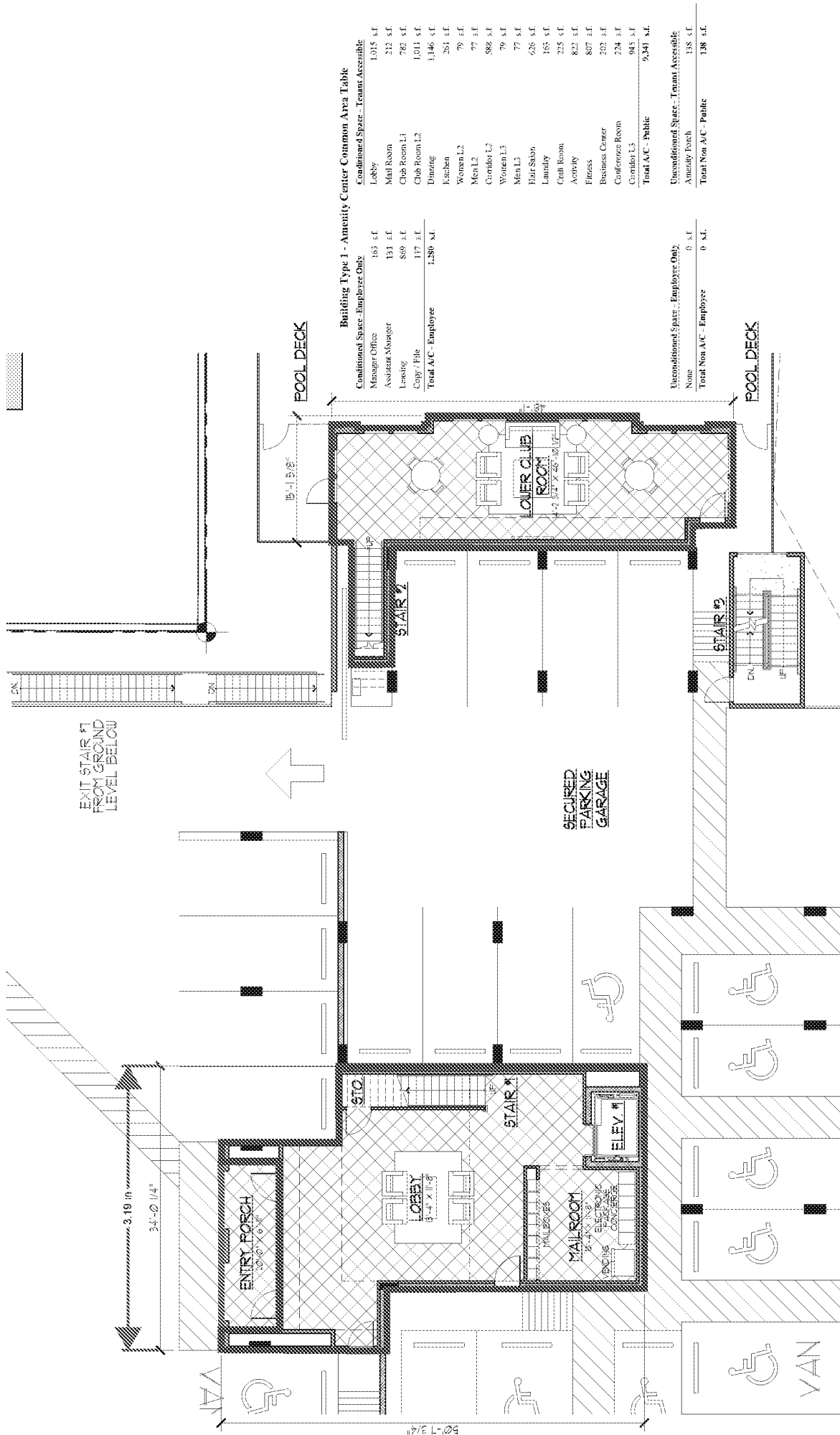




CAMPANILE ON BRIAR HOLLOW

Mucasey & Associates, Architects

February 22, 2020



Building Type 1 - Amenity Center Common Area Table

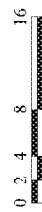
Conditioned Space - Employee Only		Conditioned Space - Tenant Accessible	
Manager Office	153 s.f.	Lobby	1,015 s.f.
Assistant Manager	131 s.f.	Mail Room	212 s.f.
Leasing	869 s.f.	Club Room L1	782 s.f.
Copy / File	117 s.f.	Club Room L2	1,011 s.f.
Total A.C. - Employee	1,280 s.f.	Dining	1,146 s.f.
		Kitchen	281 s.f.
		Women L2	79 s.f.
		Men L2	77 s.f.
		Corridor L2	586 s.f.
		Women L3	79 s.f.
		Men L3	77 s.f.
		Hair Salon	626 s.f.
		Laundry	165 s.f.
		Golf Room	213 s.f.
		Activity	822 s.f.
		Fitness	807 s.f.
		Business Center	202 s.f.
		Conference Room	274 s.f.
		Corridor L3	943 s.f.
		Total A.C. - Public	9,241 s.f.

Unconditioned Space - Employee Only		Unconditioned Space - Tenant Accessible	
None	0 s.f.	Amenity Porch	118 s.f.
Total Non-A.C. - Employee	0 s.f.	Total Non-A.C. - Public	118 s.f.

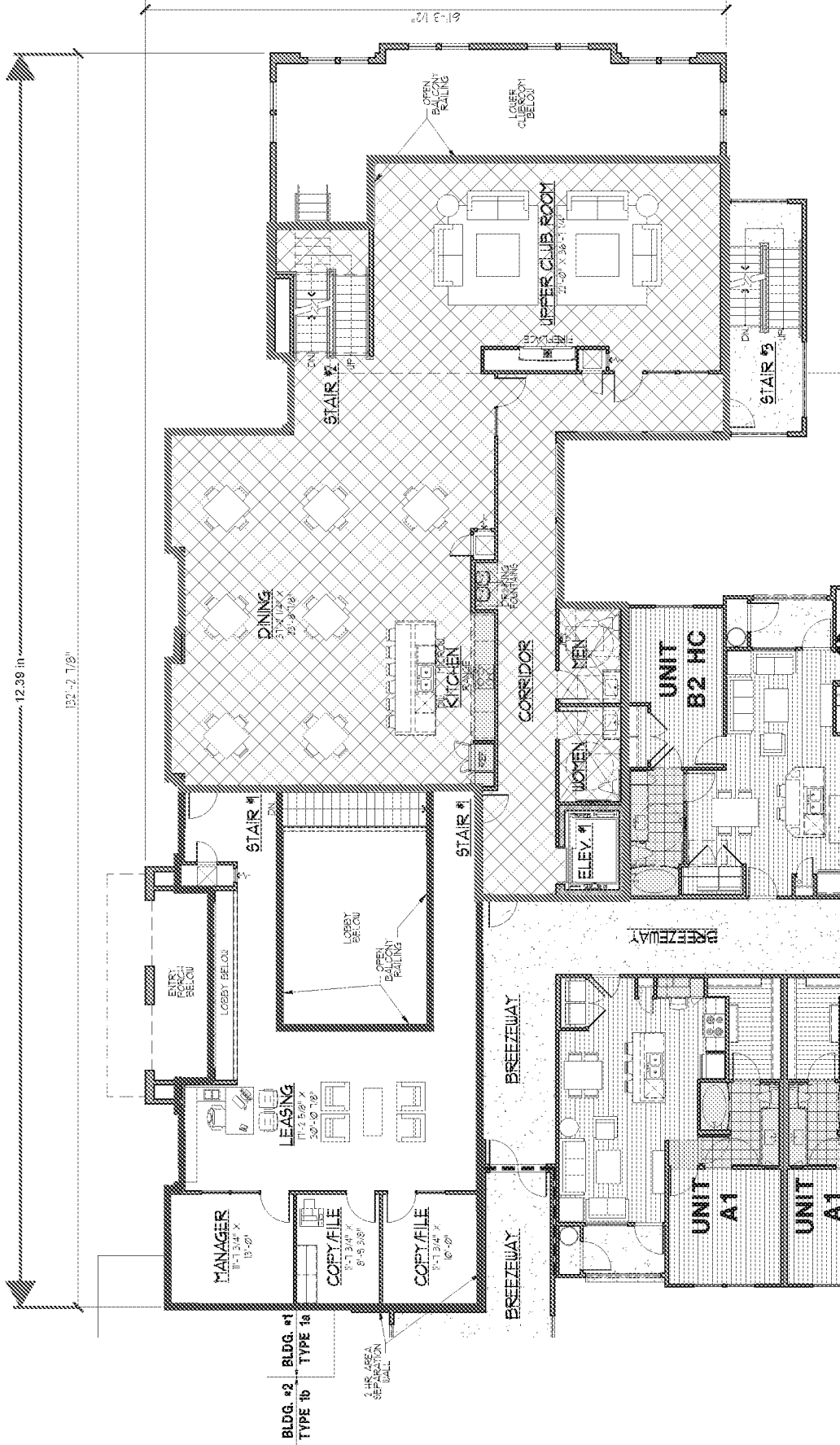
AMENITY CENTER - Level 1

Campanile on Briar Hollow

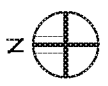
Mucasey & Associates, Architects



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.



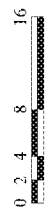
12.39 m
132'-2 7/8"



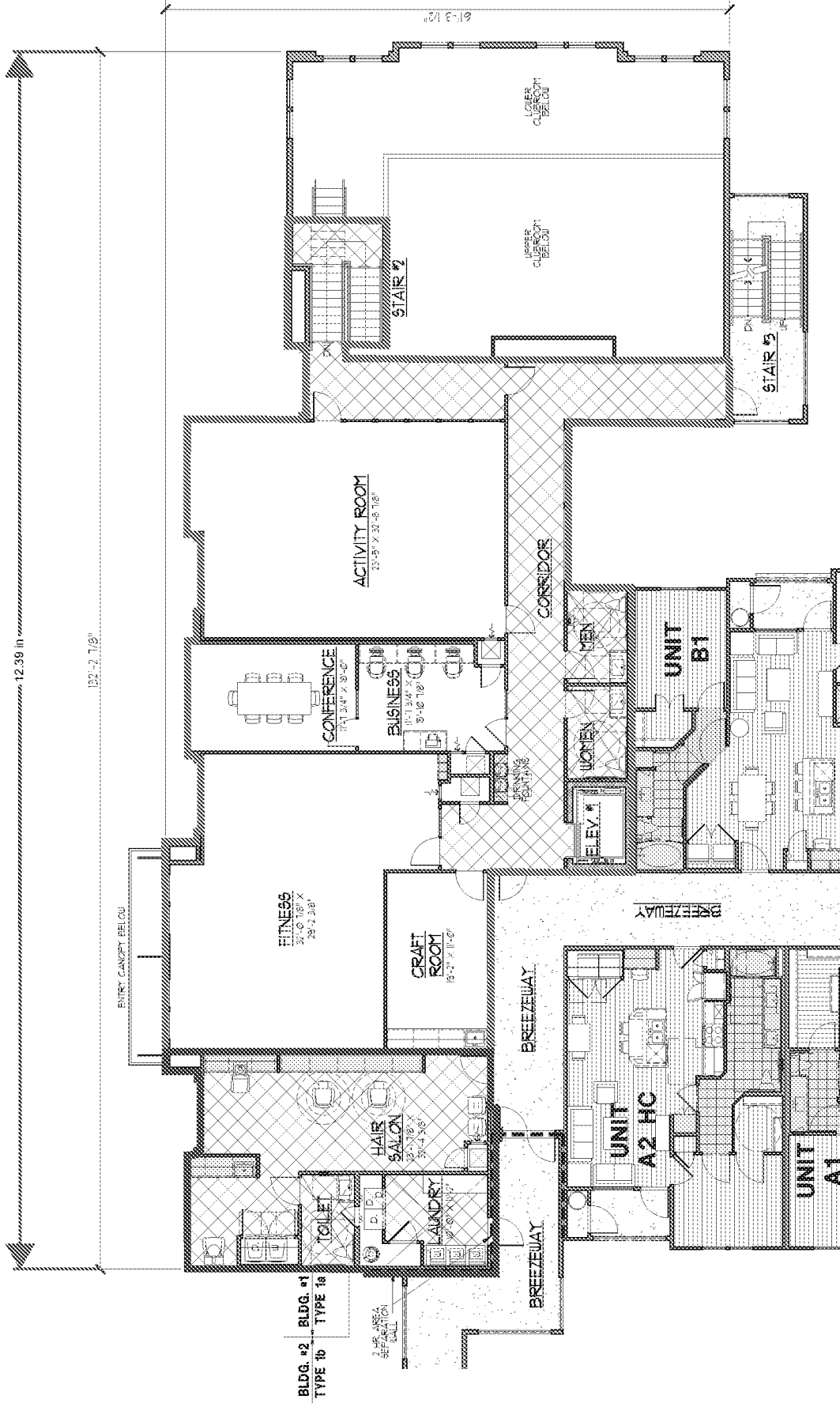
AMENITY CENTER - Level 2

Campanile on Briar Hollow

Mucasey & Associates, Architects

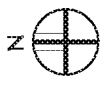


TDHCA Disclosure: In accordance with the rules of the Texas Department of Housing and Community Affairs, aspects of this development may be subject to change, including but not limited to, changes in the amenities ultimately selected and provided.



BLDG. #2 BLDG. #1
TYPE 1b TYPE 1a

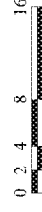
2 HR. AREA
SEPARATION
WALL



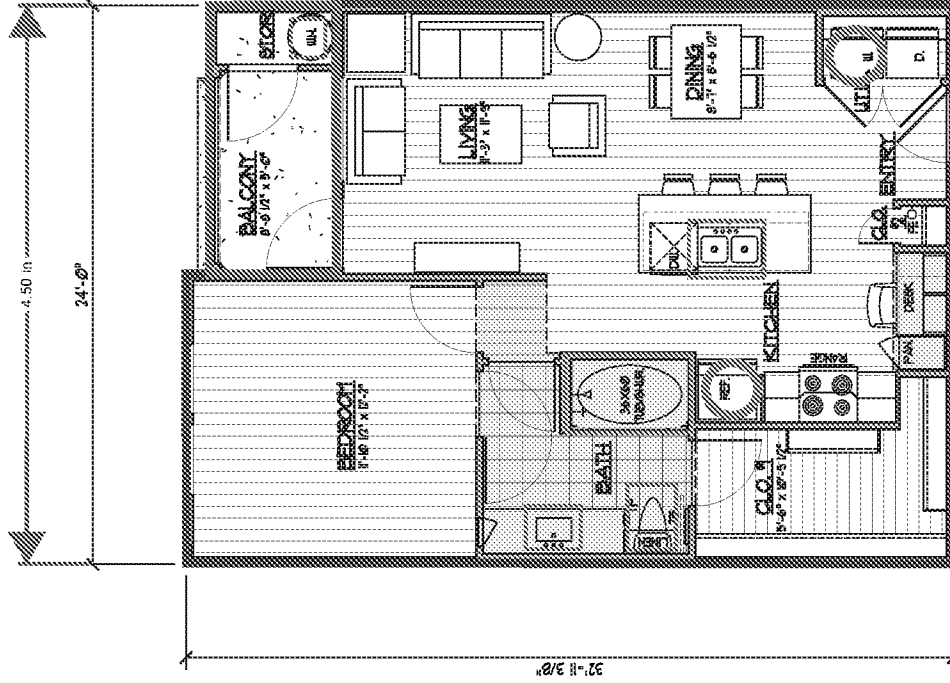
AMENITY CENTER - Level 3

Campanile on Briar Hollow

Mucasey & Associates, Architects



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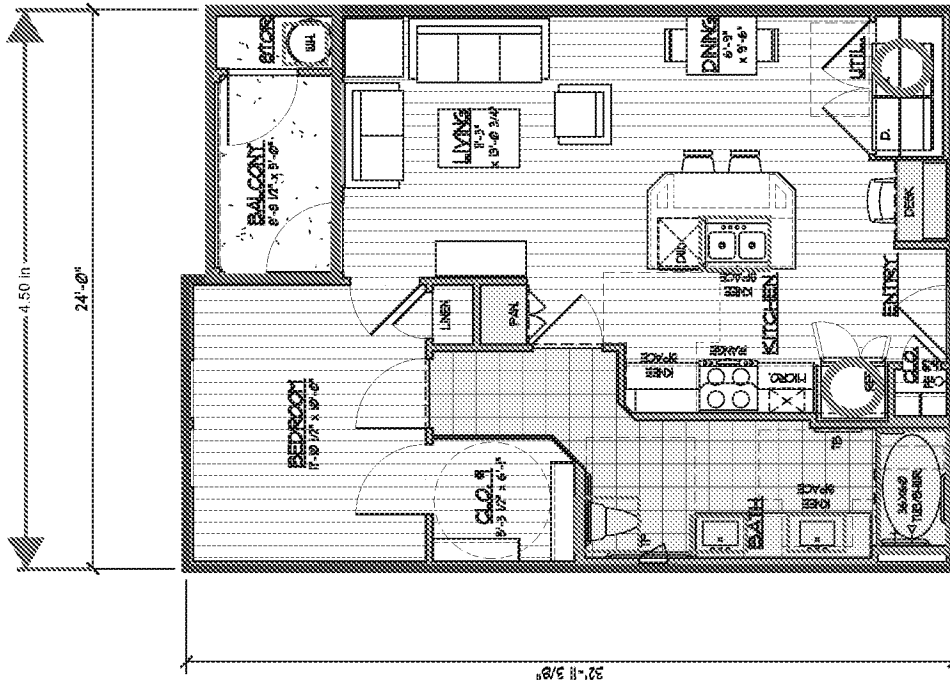
UNIT "A1" - One Bedroom, 1 Bath

Campanile on Briar Hollow (Fair Housing Accessible) 716 s.f.

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.





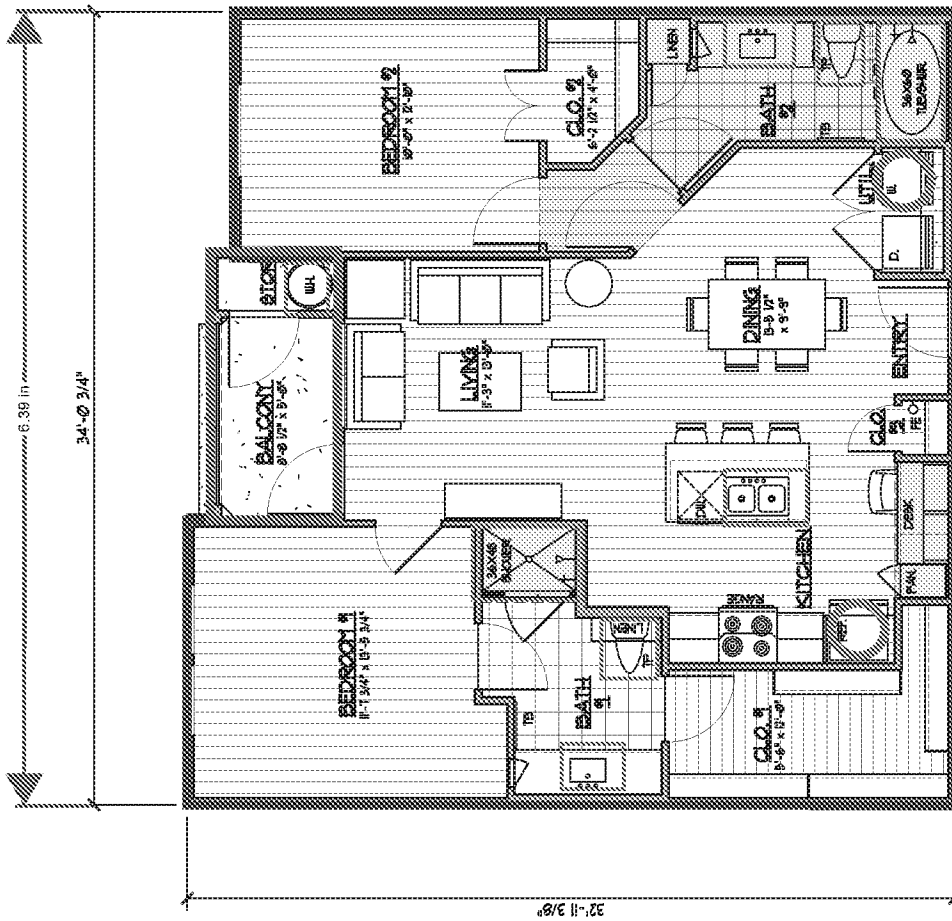
UNIT "A2" - One Bedroom, 1 Bath

716 sq ft
 ADA/UFAS ACCESSIBLE

Campanile on Briar Hollow
 Mucasey & Associates, Architects

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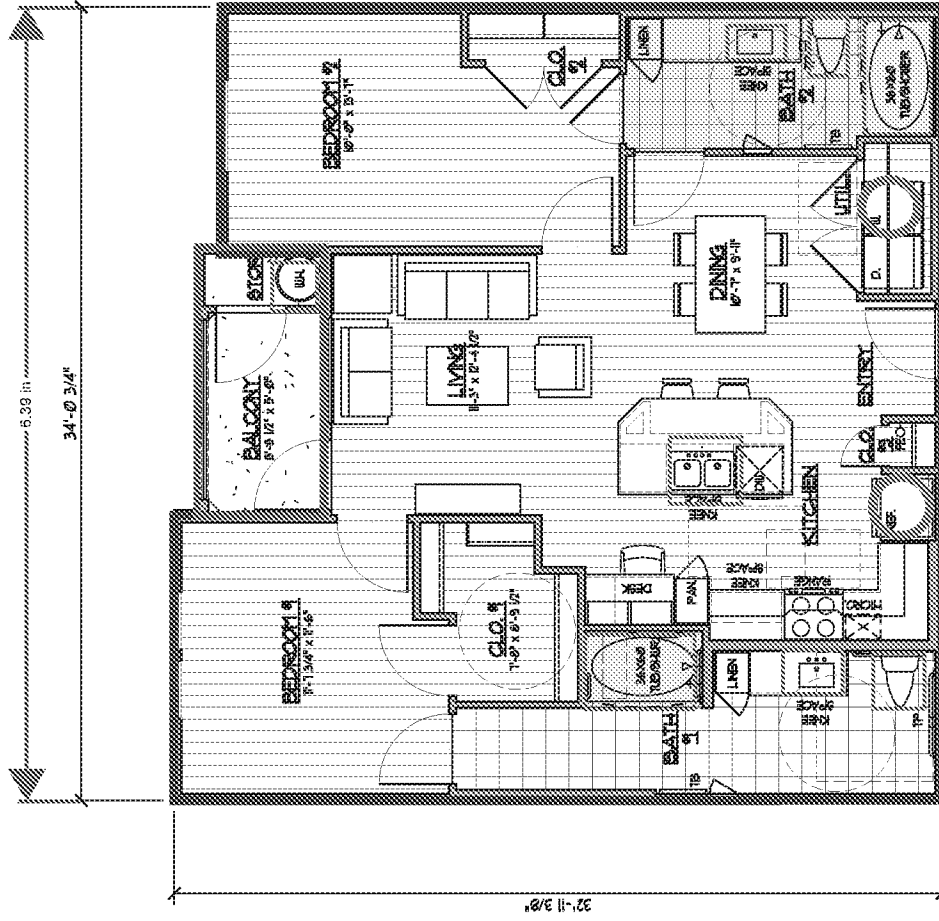
UNIT "B1" - Two Bedroom, 2 Bath

Campanile on Briar Hollow (Fair Housing Accessible) 1,029 s.f.

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.





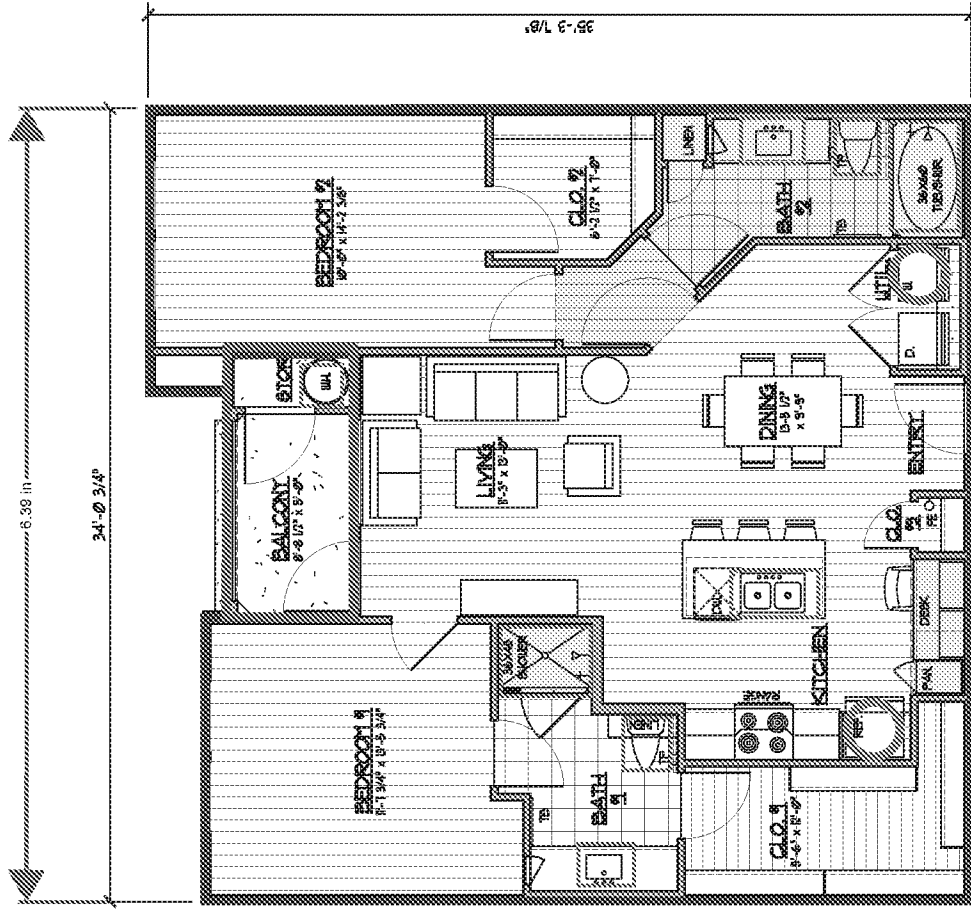
UNIT "B2" - Two Bedroom, 2 Bath

Campanile on Briar Hollow
 Mucasey & Associates, Architects

1,029 s.f.
 ADA/UFAS ACCESSIBLE

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.



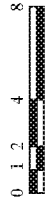


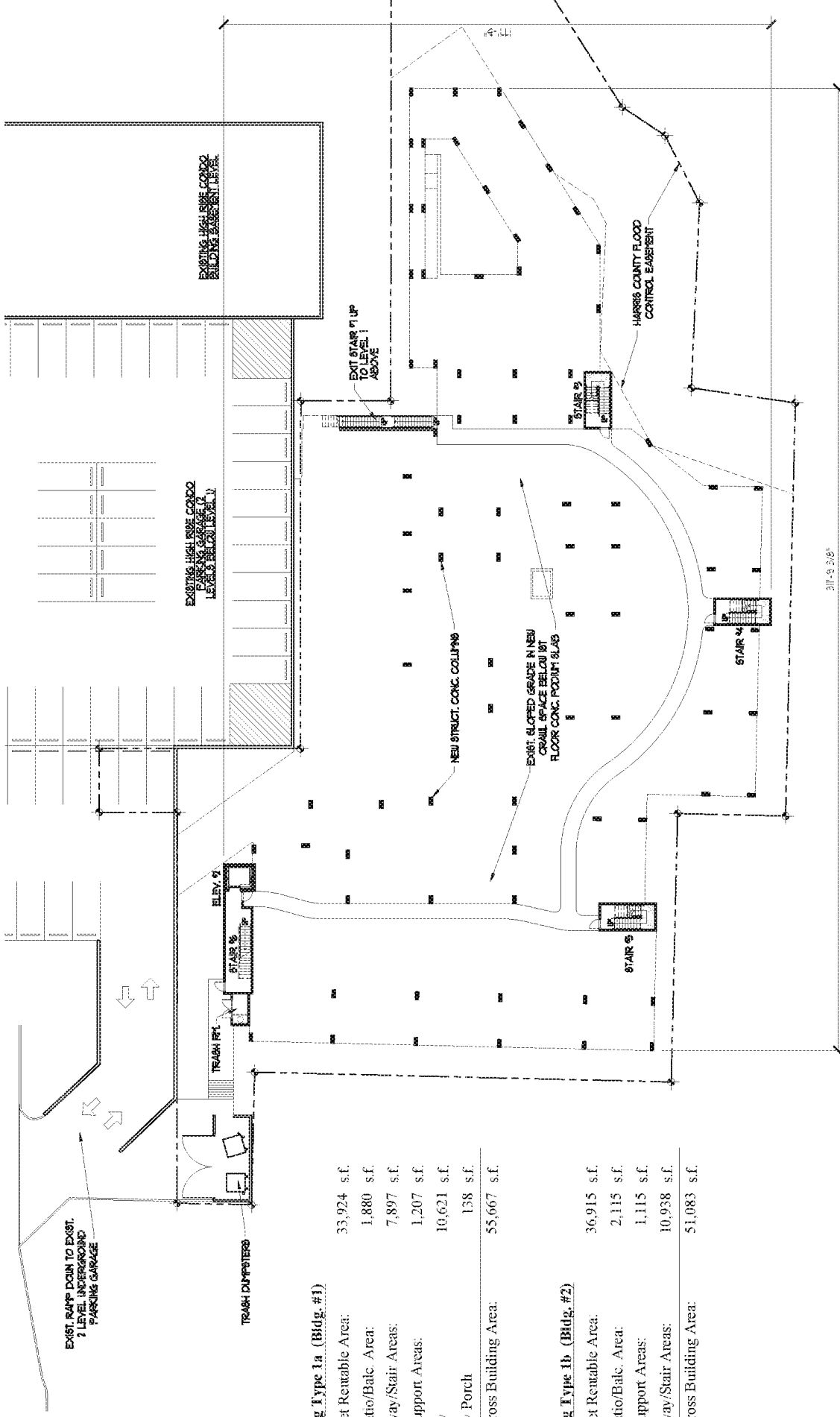
UNIT "B3" - Two Bedroom, 2 Bath

Campanile on Briar Hollow (Fair Housing Accessible) 1,075 s.f.

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.





EXIST. RAMP DOWN TO EXIST. 1 LEVEL UNDERGROUND PARKING GARAGE

EXISTING HIGH RISE CONDO PARKING GARAGE (2 LEVELS BELOW LEVEL 1)

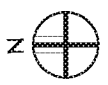
EXISTING HIGH RISE CONDO BUILDING BASEMENT LEVEL

Building Type 1a (Bldg. #1)

Total Net Rentable Area:	33,924 s.f.
Total Patio/Balc. Area:	1,880 s.f.
Breezeway/Stair Areas:	7,897 s.f.
Other Support Areas:	1,207 s.f.
Amenity	10,621 s.f.
Amenity Porch	138 s.f.
Total Gross Building Area:	55,667 s.f.

Building Type 1b (Bldg. #2)

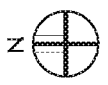
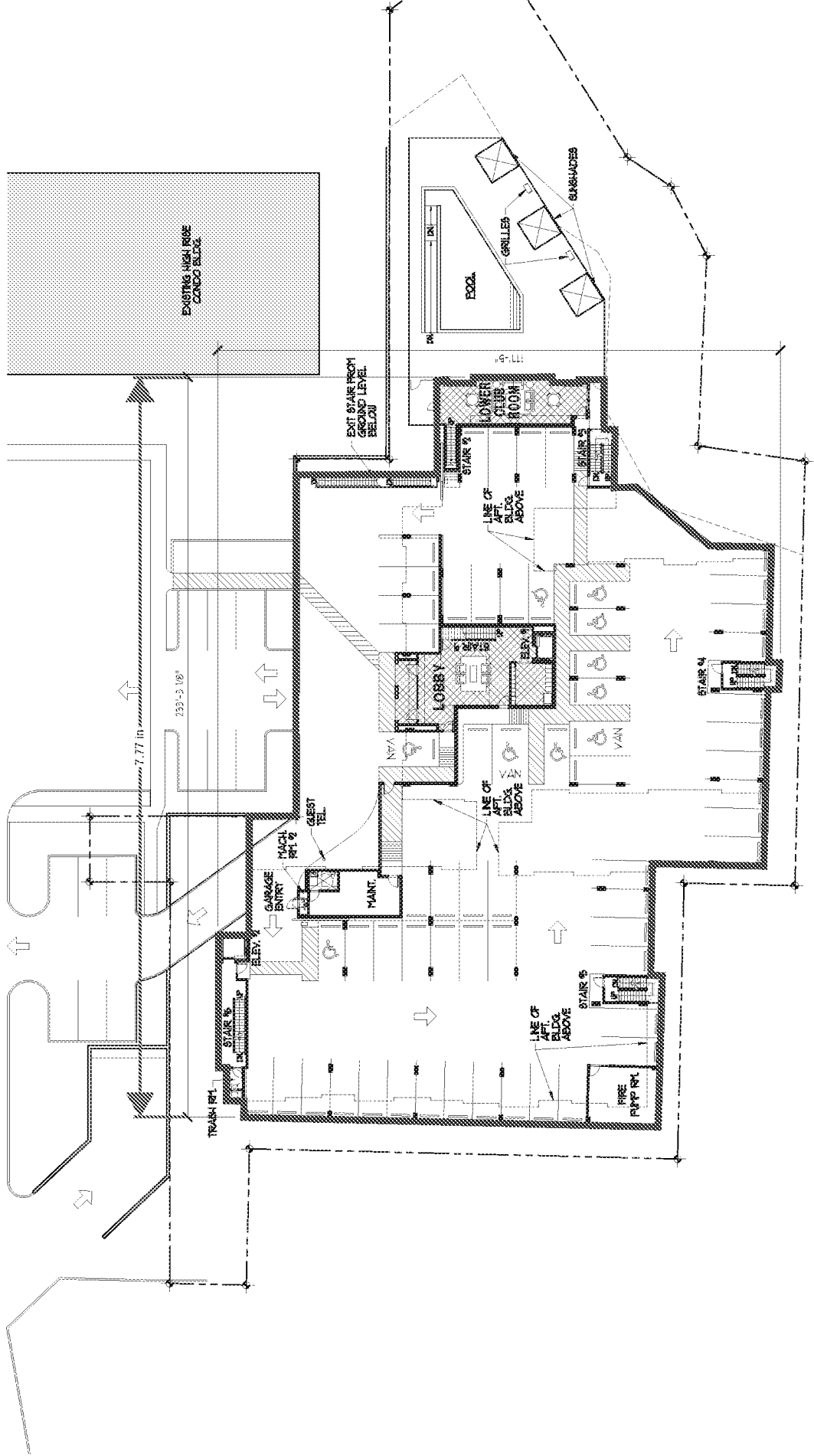
Total Net Rentable Area:	36,915 s.f.
Total Patio/Balc. Area:	2,115 s.f.
Other Support Areas:	1,115 s.f.
Breezeway/Stair Areas:	10,938 s.f.
Total Gross Building Area:	51,083 s.f.



BUILDING PLAN - Ground Level
Campanile on Briar Hollow
 Mucasey & Associates, Architects



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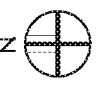
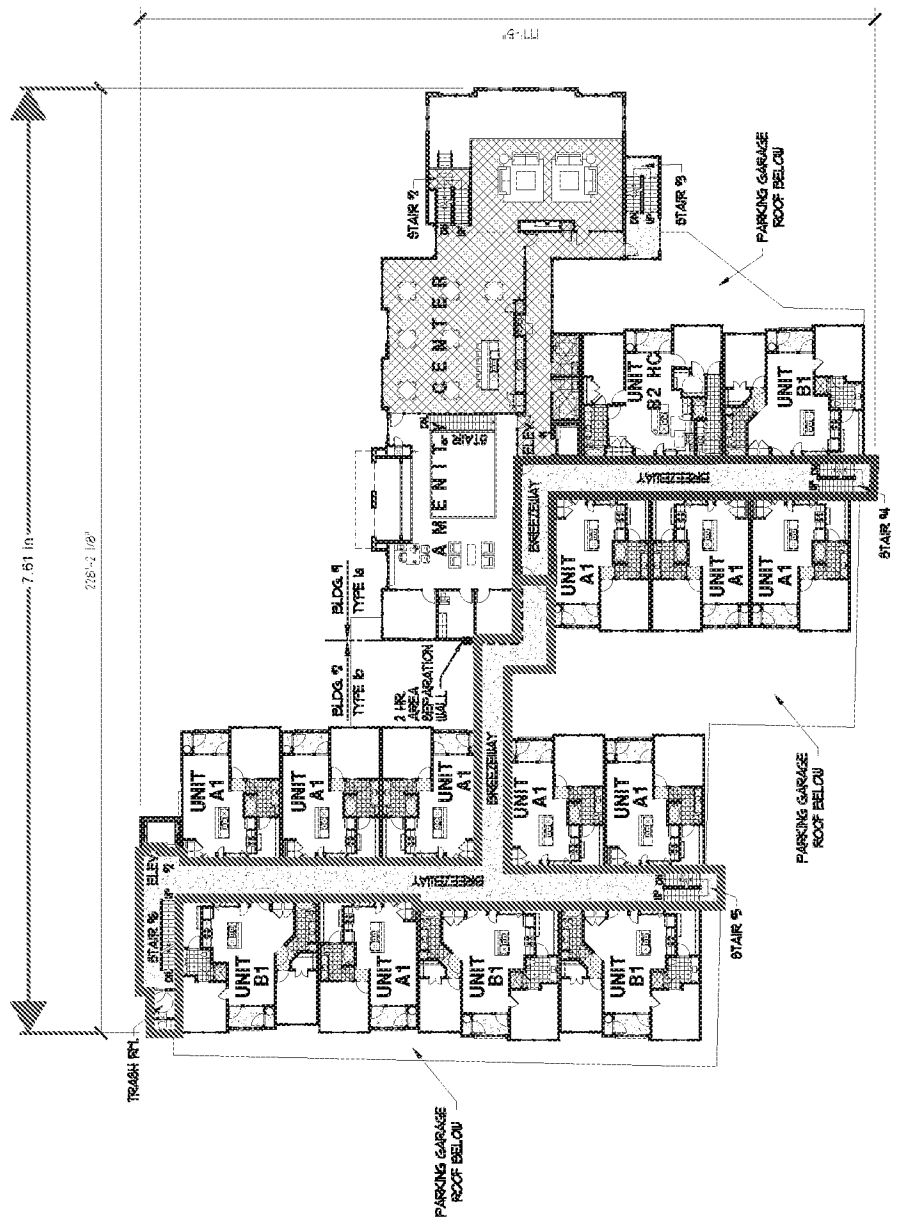
BUILDING PLAN - Level 1

Campanile on Briar Hollow

Mucasey & Associates, Architects



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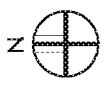
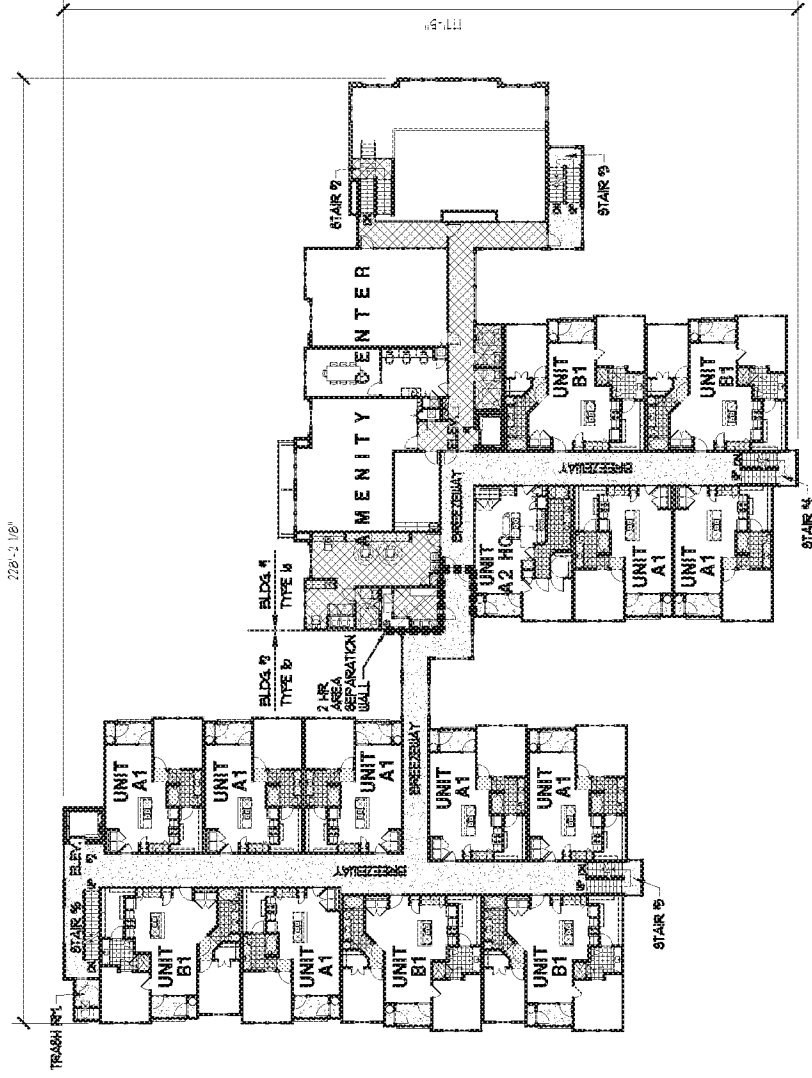
BUILDING PLAN - Level 2

Campanile on Briar Hollow

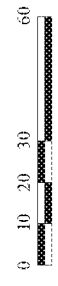
Mucasey & Associates, Architects



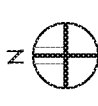
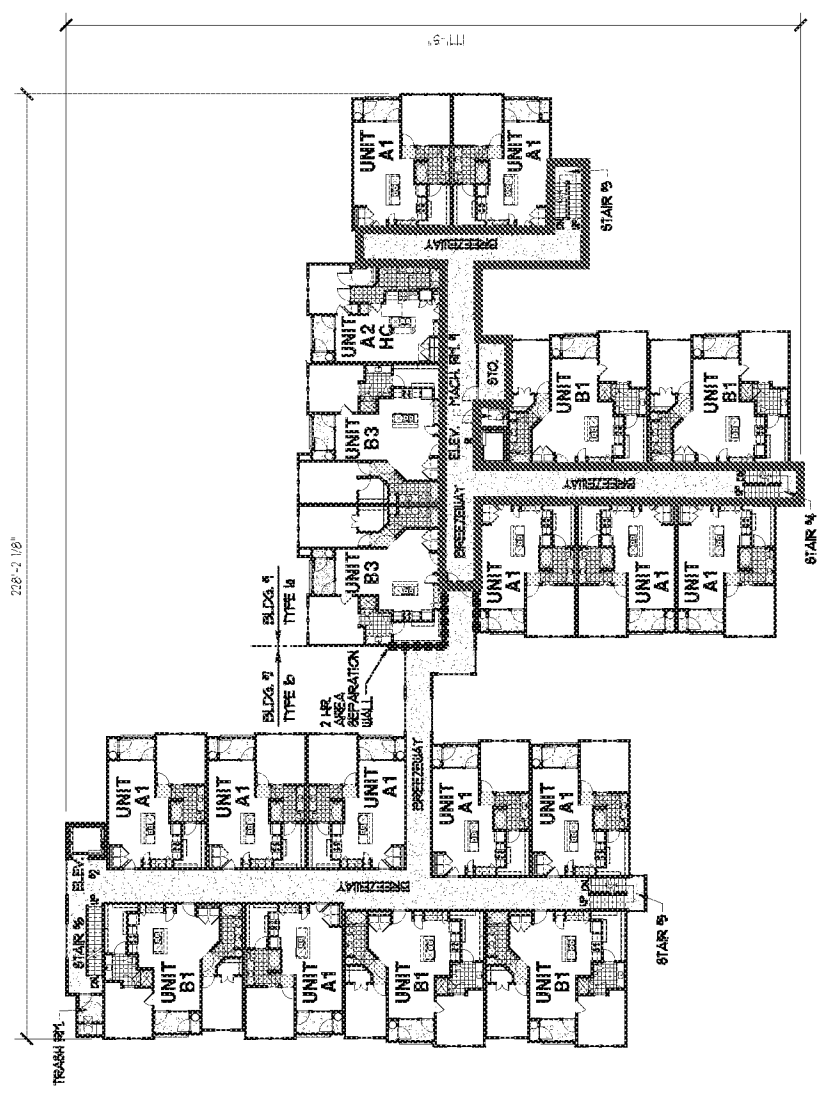
TD/HCA Disclosure: In accordance with the rules of the Texas Department of Housing and Community Affairs, aspects of this development may be subject to change, including but not limited to, changes in the amenities ultimately selected and provided.



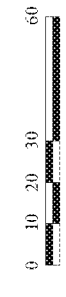
BUILDING PLAN - Level 3
Campanile on Briar Hollow
 Mucasey & Associates, Architects



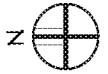
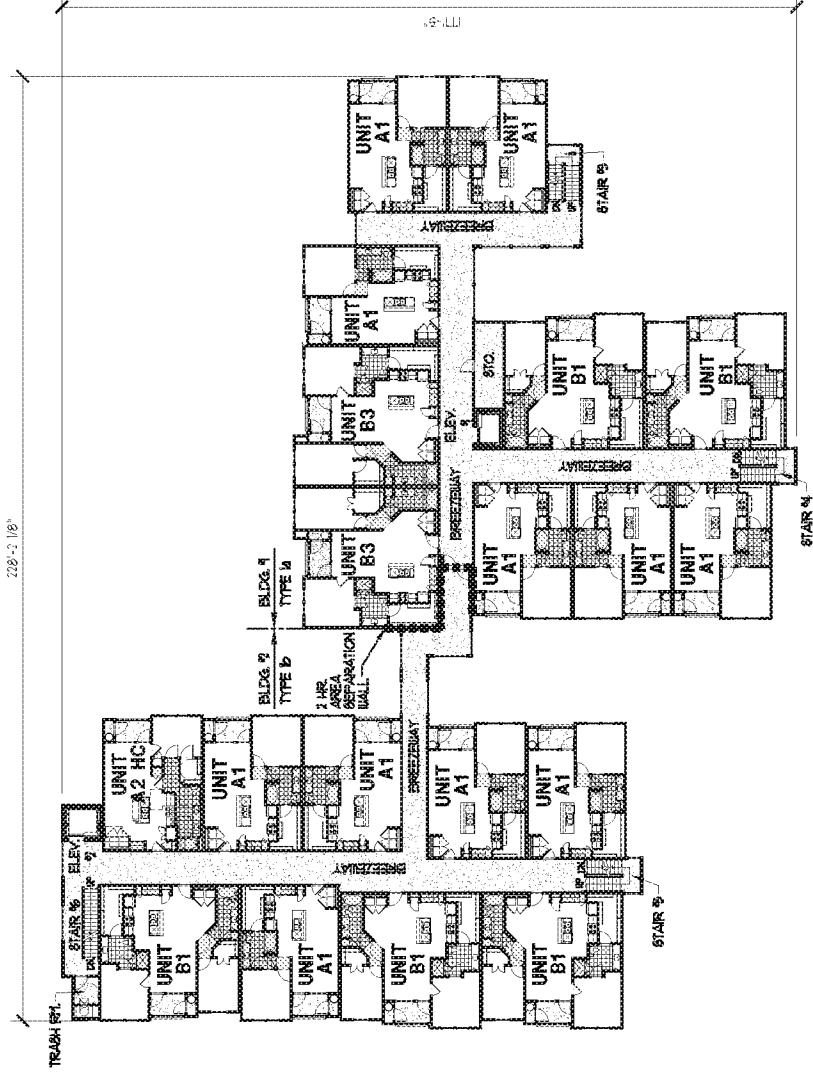
TDHCA Disclosure: In accordance with the rules of the Texas Department of Housing and Community Affairs, aspects of this development may be subject to change, including but not limited to, changes in the amenities ultimately selected and provided.



BUILDING PLAN - Level 4
Campanile on Briar Hollow
 Mucasey & Associates, Architects



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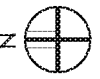
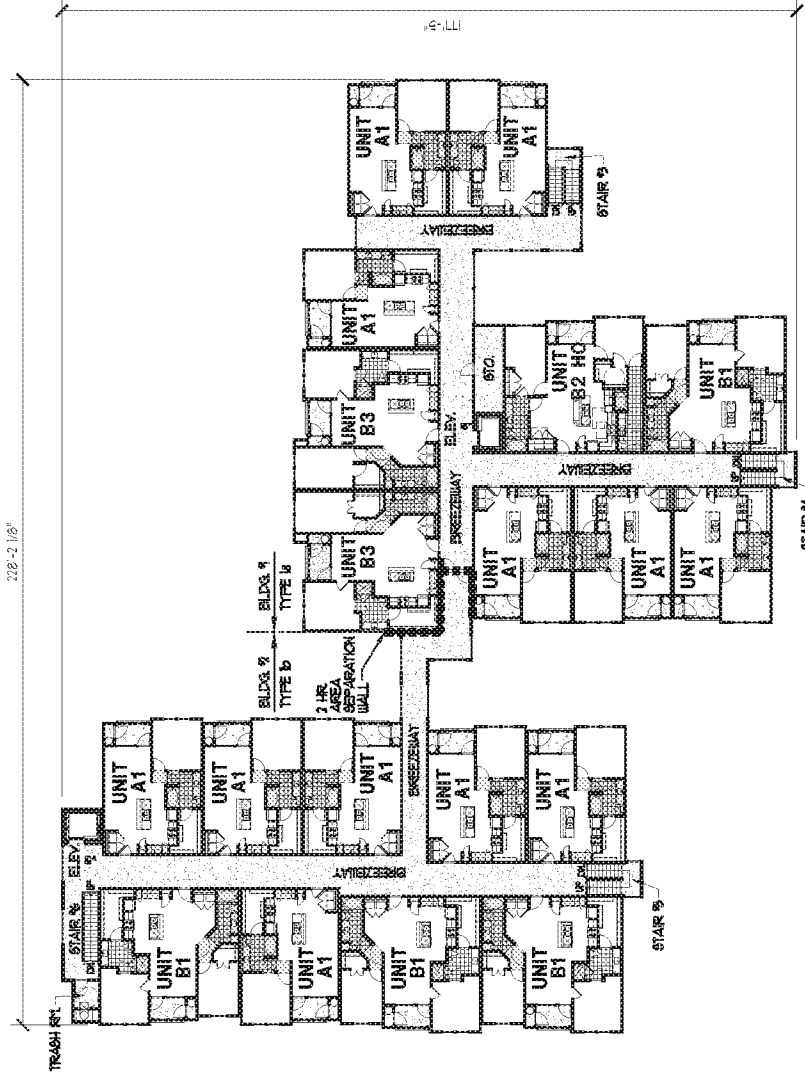
BUILDING PLAN - Level 5

Campanile on Briar Hollow

Mucasey & Associates, Architects



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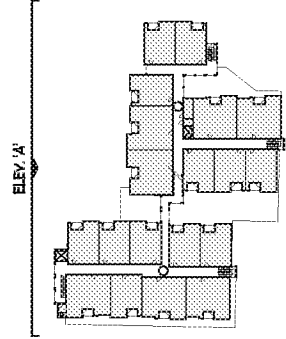
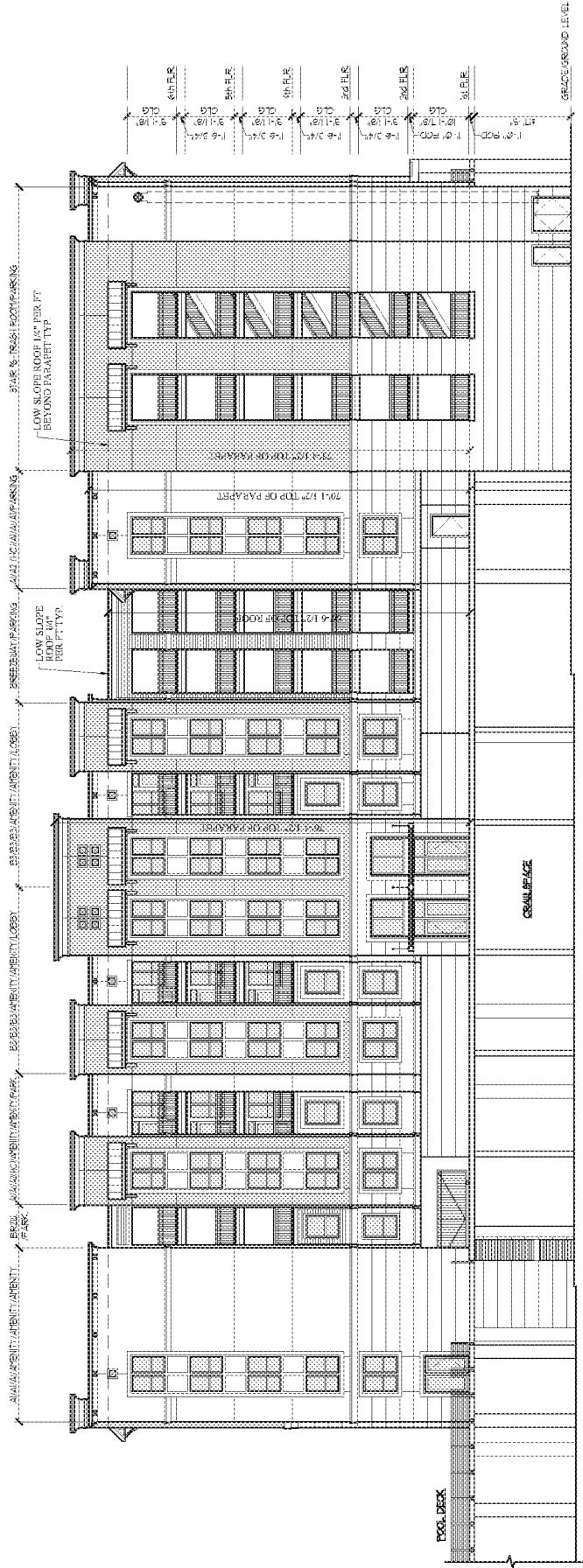
BUILDING PLAN - Level 6

Campanile on Briar Hollow

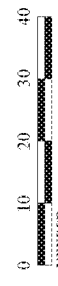
Mucasey & Associates, Architects



TD/HCA 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.

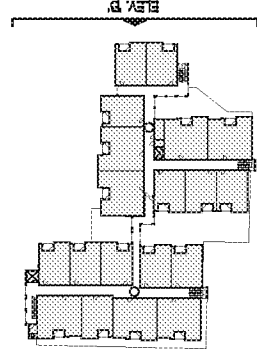
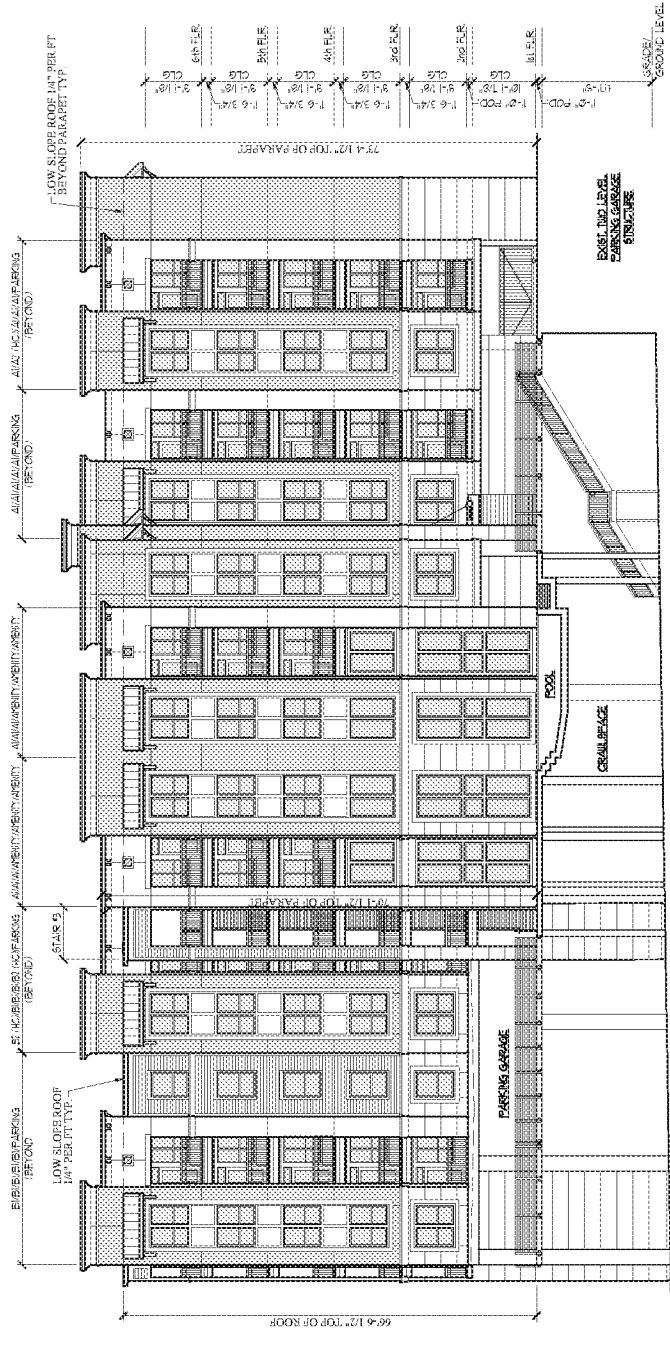


ELEVATION - "A"
Campanile on Briar Hollow
 Mucasey & Associates, Architects



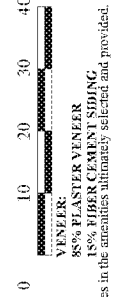
VENEER:
 85% PLASTER VENEER
 15% FIBER CEMENT SIMING

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.

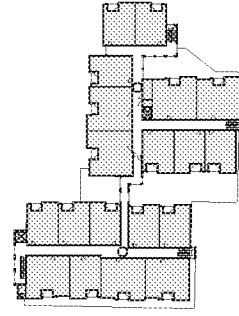
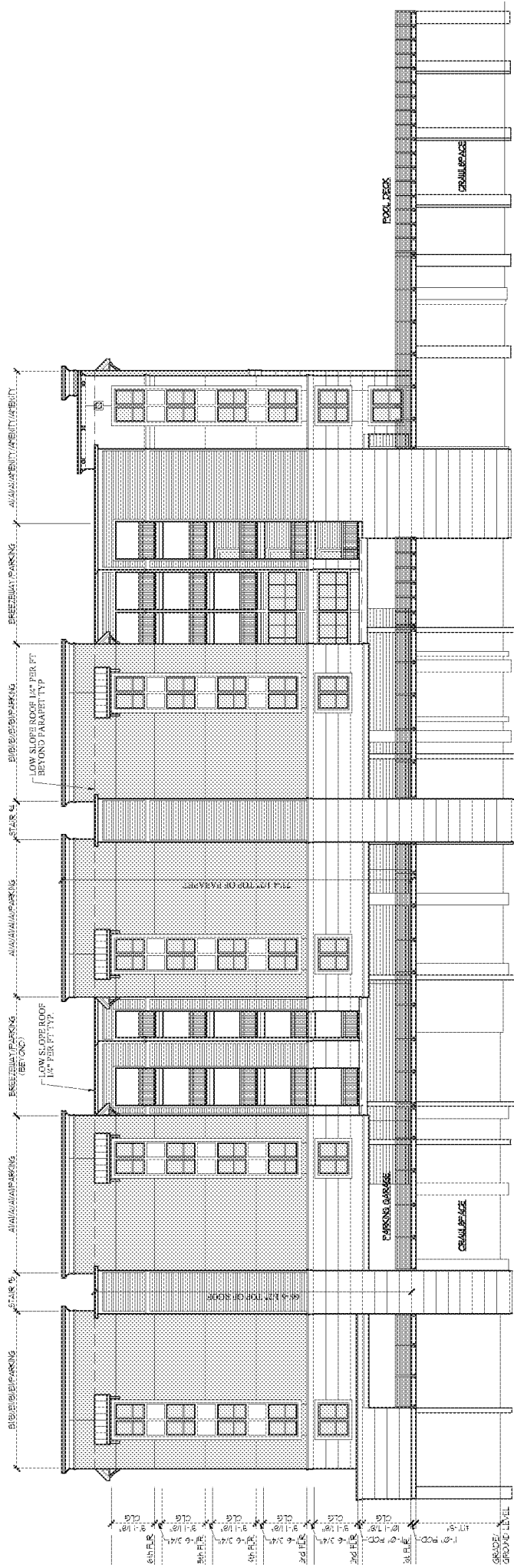


ELEVATION - "B"
Campanile on Briar Hollow
 Mucasey & Associates, Architects

Keyplan



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ELEV. 'C'



Keyplan



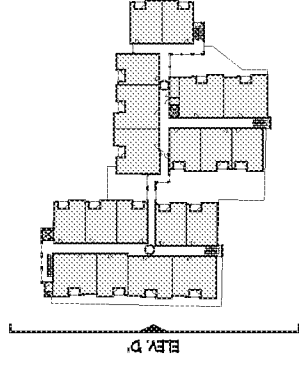
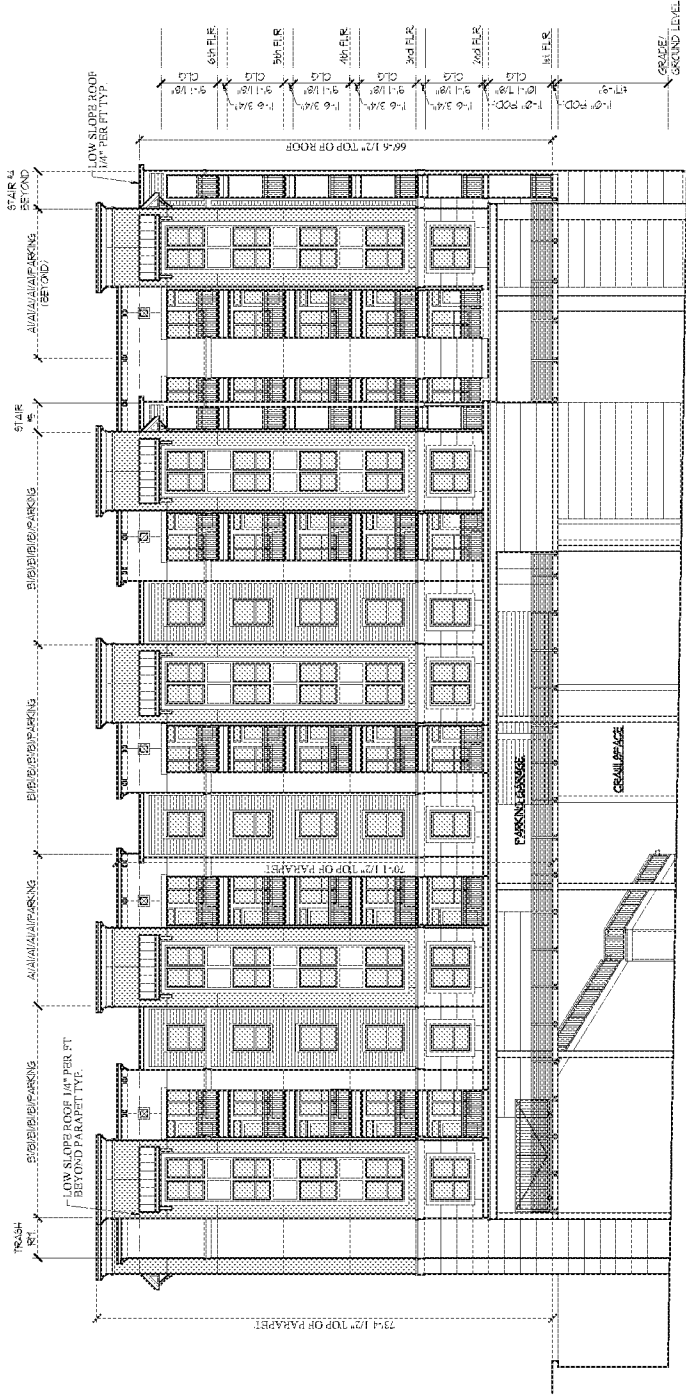
VENEER:
85% PLASTER VENEER
15% FIBER CEMENT SIMING

ELEVATION - "C"

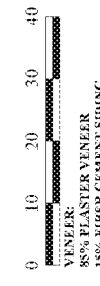
Campanile on Briar Hollow

Mucasey & Associates, Architects

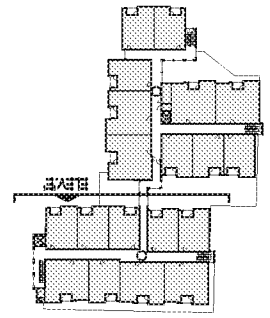
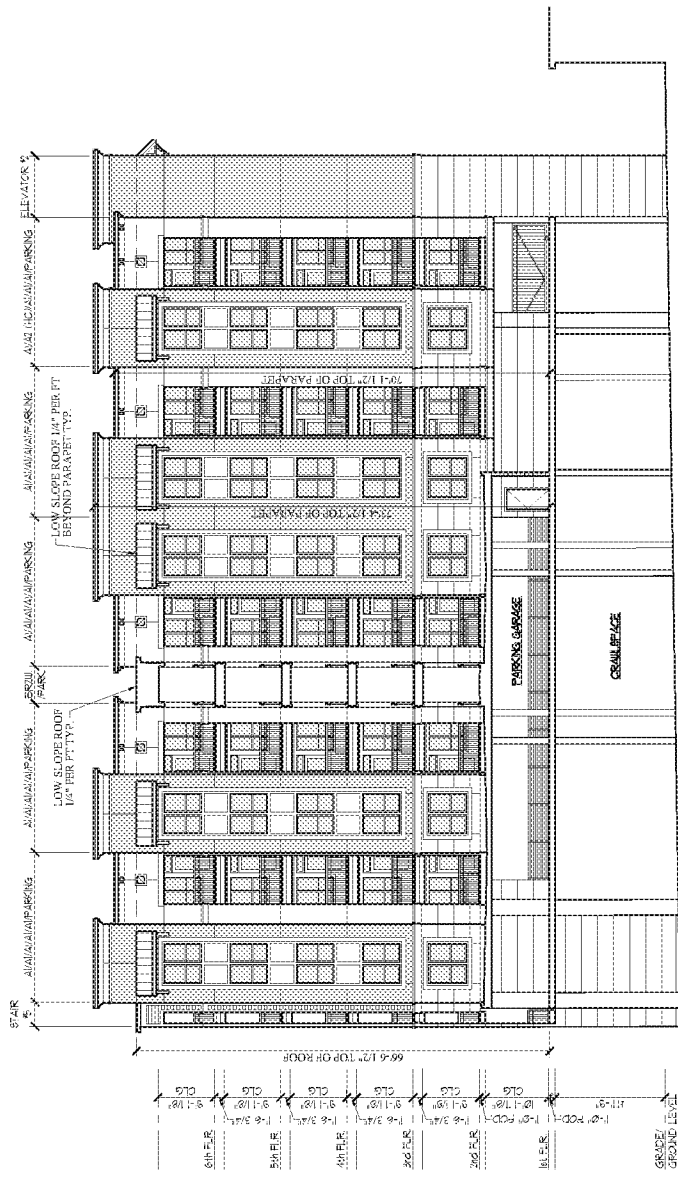
TDHCA Disclosure: In accordance with the rules of the Texas Department of Housing and Community Affairs, aspects of this development may be subject to change, including but not limited to, changes in the amenities ultimately selected and provided.



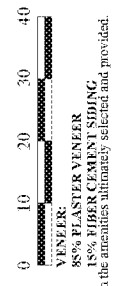
ELEVATION - "D"
Campanile on Briar Hollow
 Mucasey & Associates, Architects



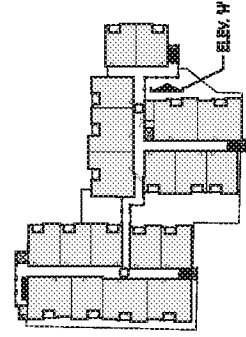
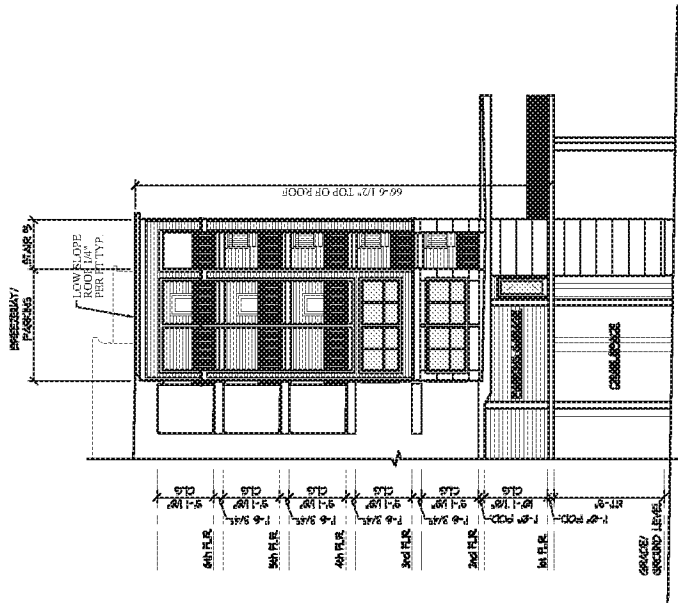
TDHCA Disclosure: In accordance with the rules of the Texas Department of Housing and Community Affairs, aspects of this development may be subject to change, including but not limited to, changes in the amenities ultimately selected and provided.



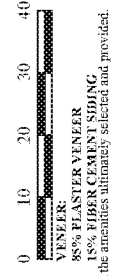
ELEVATION - "E"
Campanile on Briar Hollow
 Mucasey & Associates, Architects



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.



Keyplan



ELEVATION - "H"
Campanile on Briar Hollow
 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.

PROJECT # (assigned by City): _____

**DECLARATION IN SUPPORT OF APPLICATION FOR CITY OF HOUSTON
BUILDING PERMIT**

(For Use by Corporate or Other Business Entity Owners)

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Garrett Ross Landers-Genzer and my address is 8411 Taro Lane
(First, Middle, Last)

Baytown, TX 77521. I am over the age of eighteen and I am legally competent to make this Declaration. I have personal knowledge of every fact stated herein and every fact stated herein is true and correct. This Declaration will be submitted to the City of Houston, Texas (the ‘City’) as part of the Application for a Building Permit for a project (‘the Project’) located or to be located in the Park Square Condominiums Subdivision, Block No. _____, Lot No. _____ (the ‘Land’). The physical mailing address of the Land is 471 Briar Hollow Ln., Houston Texas 77027.

The OWNER of the Land is Kilday Operating, LLC, which is a Texas LLC. My position with Landers Consulting, Inc. (Type of entity. i.e. Texas Corporation) is that of Agent/Permitting Consultant, as such, I am an authorized representative and, as such, authorized to execute this Declaration on the Owner’s behalf. I understand this Declaration is binding on the Owner.

I also understand, for the purposes of this Application, the term ‘Deed Restriction’ means any and every restriction or covenant contained in (or incorporated by reference into) a plan, plat, replat, deed, or any other publicly recorded document that limits or affects the use of the Land in any way. I further understand copies of the Deed Restrictions, if any, are available for review at the office of the Clerk of the County in which the Land is located. **The Project does not violate the Deed Restrictions, if any, that apply to the Land.**

I UNDERSTAND AND AGREE that if any fact stated in this Declaration is false, the City may void any permit(s) issued by the City for the Project, and the City may order the Owner or its successor to remove all or part of the Project at my or our own expense.

I declare under penalty of perjury the foregoing is true and correct.

Executed in Harris County, State of Texas, on the 27th day of August, 2020.

Garrett Landers-Genzer
Authorized Representative of Kilday Operating, LLC”



CAUSE NO. _____

BRIAR HOLLOW TOWNHOUSE
ASSOCIATION, INC.,

Plaintiff

vs.

CAMPANILE ON BRIAR HOLLOW LP,
KILDAY OPERATING LLC, and
JAYMEE JOINT VENTURE,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF’S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR PRODUCTION, AND FIRST REQUEST FOR ADMISSIONS TO DEFENDANTS CAMPANILE ON BRIAR HOLLOW LP and KILDAY OPERATING LLC

TO: Defendant CAMPANILE ON BRIAR HOLLOW LP, c/o Les Kilday, 1717 St. James Place, Suite 150, Houston, Texas 77056

Defendant KILDAY OPERATING LLC , c/o Barry J. Palmer, 9 Greenway Plaza, Suite 1100, Houston, TX 77046.

Pursuant to TEXAS RULES OF CIVIL PROCEDURE 192, 193, 196, and 197, and 198, Plaintiff serves this First Set of Interrogatories, First Requests For Production, and First Requests for Admissions to Defendants CAMPANILE ON BRIAR HOLLOW LP and KILDAY OPERATING LLC. You are advised that answers to the Interrogatories and responses to the Requests for Production and Requests for Admissions must be served upon the undersigned counsel within fifty (50) days from the date of service in accordance with the TEXAS RULES OF CIVIL PROCEDURE and the definitions and instructions provided herein. You should serve written responses and responsive information and materials upon the undersigned counsel at 2500 FANNIN STREET, HOUSTON, TEXAS 77002; or *via* email at bkilpatrick@wcglaw.com.



Respectfully submitted,

WILSON, CRIBBS + GOREN, P.C.

By: /s/ Brian B. Kilpatrick

Brian B. Kilpatrick, TBN 24074533

Email: bkilpatrick@wcglaw.com

Scot Clinton, TBN 24045667

Email: sclinton@wcglaw.com

Sara M. Prasatik, TBN 24088251

Email: sprasatik@wcglaw.com

2500 Fannin Street

Houston, Texas 77002

Telephone (713) 222-9000

Facsimile (713) 229-8824

ATTORNEYS FOR PLAINTIFF

I. DEFINITIONS

1. The terms “Defendants,” “you,” and “your,” as used herein, unless otherwise indicated, means and refers to CAMPANILE ON BRIAR HOLLOW LP and KILDAY OPERATING LLC, including their agents, affiliates, partners, and employees.
2. “All” shall mean “any” and vice versa.
3. “And” and “or” shall be construed either disjunctively or conjunctively whenever appropriate in order to bring within the scope of this request any information which might otherwise be considered beyond its scope.
4. “Communication” means any transmission of information, the information transmitted, and any process by which information is transmitted, and shall include written, electronic, and oral communications, including, without limitation, “deleted” but recoverable email transmissions and all attachments thereto.
5. “Campanile” means and refers to the proposed Campanile On Briar Hollow project described in Plaintiff’s Original Petition Amendment to the Contract attached to Plaintiff’s Original Petition as **Exhibit “B”**.
6. “Jaymee” means and refers to Jaymee Joint Venture.
7. “Plaintiff” means and refers to Briar Hollow Townhouse Association, Inc.
8. “Subject Property” means and refers to the real property described as follows:

All of PARK SQUARE CONDOMINIUMS, SECTION TWO (2), a 1.1421 acre subdivision in the William White Survey, Abstract 836, Harris County, Texas according to the map or plat thereof recorded in Volume 322, Page 128 of the Map Records of Harris County, Texas.
9. “1980 Declaration” means and refers to the Declaration of Covenants filed in and under Clerk’s File No. G484338 of the Real Property Records of Harris County, Texas.
10. “Settlement Agreement” means and refers to the Agreement of Settlement and
11. “Document” or “documents” shall mean writings of every type and from any source, including originals and non-identical copies thereof, which are in your possession, custody, or control or known by you to exist. This includes documents sent outside your organization to any source, as well as documents intended for internal use. The term also means any medium on which intelligence or information can be recorded or retrieved, and includes, without limitation, communications not only in words, but in symbols, pictures, sound recordings, film, tapes, and information stored in, or accessible through, computer or other information storage or retrieval systems. If the information is kept in a computer or informational storage or retrieval system, the term also includes codes and programming instructions and other materials necessary to understand those systems. The term includes, but is not limited to, the original and each copy, regardless of location of any advertisements, agenda, agreements, analyses, audiovisual works, books, bills, brochures, calendars, checkbooks, computerized data, contracts, corporate bylaws and

charters, correspondence, diaries, drafts of documents, evaluations, files, financial documents including balance sheets, financial statements, and profit and loss statements, intra-company communications, instructions, invoices, letters, legal documents, lists, manuals, memoranda recording or concerning telephone or in-person conferences, memoranda of interviews, notes, pamphlets, periodicals, press releases, promotional materials, print ads, public relations releases, purchase orders, records, records of obligations and expenditures, recordings of radio, television or other electronic media, registrations with government agencies, schedules, shipping records, sound recordings, telecopies, telegrams, teletypes, written reports of tests or experiments, work papers, and all other writings whose contents relate in any way to the subject matter of the discovery request. The term also includes any text-based document whether in paper or electronic form, including, but not limited to, any electronically-stored data on magnetic or optical storage media as an “active” file or files (readily readable by one or more computer applications or forensics software); any “deleted” but recoverable electronic files on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM slack] or residual data left on the hard drive after new data has overwritten some but not all of previously stored data). Electronic documents are a subset of electronic data or information.

12. The terms “electronic information” or “magnetic information” or “data” refers to all types of stored information, included documents, data compilations or databases, graphic or image files, program files, sound files, video or film, and any other kind of electronically stored information.
13. The term “metadata” means the data concerning electronic documents, emails, and other electronic files that is automatically generated by the creation, use, manipulation, editing, dissemination, or attempted deleted of the files. In some instances, your information technology staff may have limited the creation or retention of metadata. They should be consulted to insure that no further changes are made to existing data before production.
14. “File” or “files” shall mean and refer to any compilation of “documents”, in a folder, box, binder, file or other device for the purpose of storing, organizing or otherwise.
15. “Person” or “Persons” shall mean any natural person, firm, association, corporation, trust, joint venture, partnership, limited partnership, limited liability company, or other legal entity, whether public or private.
16. “Relating to,” “concerning,” and “reflecting” (or any form thereof) shall mean constituting, comprising, respecting, supporting, contradicting, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or relevant to.
17. “Things” shall mean and refer to any tangible items not otherwise included in the definition of “document” or “files”.
18. “Description” includes physical or legal description where appropriate as well as the year, make, model, serial number, or other permanent identification number such as an account number.

19. “Identify” or “Identification”:

a. Person: When used in reference to a person or individual, the terms “identify” or “identification” mean to state his or her full name, address, and telephone number.

b. Entity: The terms “identify” or “identification,” when used in reference to an entity such as a corporation, limited liability company, partnership or association, mean to state the name of the entity, its business address and telephone number.

c. Document: When used in reference to a document, the terms “identify” or “identification” shall include the following:

i. The title, heading or caption of the document.

ii. The date(s) appearing on the document; or if no date appears, the approximate date on which the document was prepared.

iii. A general description of the document.

iv. The name(s) of the person(s) who signed the document or statement that it was unsigned.

v. The name(s) of the person(s) who prepared the document.

vi. The name(s) of the person(s) to whom the document was addressed, sent or delivered.

vii. The physical location of the document.

viii. If the document is no longer in your custody and control, please state whether it is: (1) missing or lost; (2) has been destroyed; (3) has been transferred, voluntarily or involuntarily to others and if so, identify such others; or (4) has otherwise been disposed of and the method of that disposal.

20. The phrase “possession, custody or control” of a document or tangible thing includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production of a document or tangible thing from a third party (including an agency, authority or representatives), the person has possession, custody or control.

21. “Describe in detail” means to provide a complete factual summary setting forth the substance of, and identifying any person participating in, witnessing or having knowledge of, whether first-hand or otherwise, any fact, action occurrence, conduct, event, circumstances or communications concerning the item in question.

22. “Factual basis” or “factual bases” shall mean a detailed explanation or description of the events, occurrences, circumstances and reasons leading to a particular conclusion.

23. The singular and masculine form of any noun or pronoun shall embrace and be read and applied as the plural, feminine or neuter, as circumstances shall be appropriate.

24. In every interrogatory and request for production the use of the conjunctive or disjunctive shall not be construed to limit the interrogatory or request for production; the interrogatories and requests for production should be construed in either the conjunctive or disjunctive, whichever would encompass more information or material.
25. Each interrogatory and request for production should be construed independently and not by reference to any other interrogatory or request for production herein for purposes of limitation, unless expressly stated.

II. INSTRUCTIONS

1. Your answers and responses should be based upon all information or documents in the possession, custody or control of Defendant, its managers, members, principals, owners, attorneys, investigators, agents, employees, officers, directors, representatives, or anyone acting on Defendant's behalf. Information in your possession, custody or control includes knowledge or information possessed by your present or former (at the time they were affiliated with you) managers, members, principals, owners, a attorneys, investigators, agents, employees, officers, directors, representatives, or anyone acting on Defendant's behalf; and anyone else from whom Defendant has a superior right to compel the information.
2. Where an individual Request calls for a response which involves more than one part, each part of the response shall be clearly set out so that it is understandable.
3. If the spaces provided after each Request are not sufficient, you may supplement any answer on a separate sheet of paper.
4. The singular form of a word shall be interpreted as a plural and the plural form of a word shall be interpreted as a singular whenever appropriate in order to bring within the scope of these Requests any information that might otherwise be considered beyond their scope.
5. If you object or refuse to answer in whole or in part any Request propounded below, or if you object or refuse to provide any information requested below on the grounds that it requests information that falls within the scope of any discovery privilege or exemption, please provide the following information as to each such objection:
 - (i) The nature of the privilege or doctrine or exemption you claim is applicable and the reason you invoke it;
 - (ii) If a document is involved, identify the document and identify each and every person known to you to have seen the document;
 - (iii) If an oral communication, identify the communication and identify each and every person known to you to whom the substance of the communication has been disclosed.
6. You are further requested to respond with any information that is not subject to a claim of privilege or other reasons, if such a technique does not result in disclosing the contents of any information for which some privilege is asserted.

7. The singular form of a word shall be interpreted as a plural and the plural form of a word shall be interpreted as a singular whenever appropriate in order to bring within the scope of these Requests any information that might otherwise be considered beyond their scope.
8. In every interrogatory, request for production, and request for admission the use of the conjunctive or disjunctive shall not be construed to limit the interrogatory or request for production; the interrogatories and requests for production should be construed in either the conjunctive or disjunctive, whichever would encompass more information or material.
9. Each interrogatory and request for production should be construed independently and not by reference to any other interrogatory or request for production herein for purposes of limitation, unless expressly stated.
10. These interrogatories and requests for production are continuing in nature. If other information or documents come into your possession or are brought to your attention or to your attorney in the course of trial or preparation for trial, supplementation of the answers and responses is required.
11. All documents produced in response to these requests for production or interrogatories shall be produced *in toto*, notwithstanding the fact that portions thereon may contain information not requested, shall include interim, as well as final, editions of the documents, and shall include all additions or copies of the document which are not identical (whether due to handwritten notations, or revisions, or otherwise) to the original or other produced copy of the document.
12. Unless otherwise indicated, these discovery requests seek the discovery of information documents, and materials created, generated, originating in or arising during the time period from **November 1, 2019 through the present**. To the extent documents exist outside this time period, discovery and/or production of such documents is not requested at this time.
13. For each request for admission, You must specifically admit or deny the factual statements set forth in each request. In the event that you fail to admit a request for admission and proof demonstrates that such request should have been admitted, Plaintiff may be entitled to reasonable expenses incurred in proving such matters pursuant to TEX. R. CIV. P. 215.4. You are further advised that a failure to specifically answer any request or an evasive answer to any request may be taken as an admission of truth of such request pursuant to TEX. R. CIV. P. 198.2(c).

III. FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1: Please identify each person who prepared or assisted in preparing your Answers to this First Set of Interrogatories, including, without limitation, the name, address, telephone number(s) (including wireless phone number(s)), email address(es), title(s)/position(s)/office(s) held, and/or the nature of such each person's relationship to you.

ANSWER:

INTERROGATORY NO. 2: If you contend that the Campanile does not violate the 40-foot building line setback described in the 1980 Declaration, please identify each and every document and state each and every fact and reason supporting your contention.

ANSWER:

INTERROGATORY NO. 3: Do you intend to build balconies on the western-facing side of the Campanile?

ANSWER:

INTERROGATORY NO. 4: Do you intend to install any exterior doors on the western-facing side of the Campanile?

ANSWER:

INTERROGATORY NO. 5: Please identify and describe in detail all windows that you intend to install on the western-facing side of the Campanile. Your answer should state the number and size of each window facing west.

ANSWER:

INTERROGATORY NO. 6: Please identify and describe in detail the improvements you intend to build between the western property line of the Subject Property and the 40-foot building line setback set forth in the 1980 Declaration.

ANSWER:

INTERROGATORY NO. 7: Please identify and describe in detail the number of dwelling units you intend to build within the Campanile.

ANSWER:

INTERROGATORY NO. 8: Please identify and describe in detail each and every communication you had with Jaymee regarding restrictive covenants encumbering the Subject Property.

ANSWER:

IV. FIRST REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce any and all communications and documents you identified or described in your answers to Plaintiff's First Set of Interrogatories.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Produce the entire contents of any and all files maintained by you regarding the Subject Property, including but not limited to any and all correspondence, notifications, and other documents related thereto.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Produce copies of any and all email communications sent between you and Jaymee relating in any way to the Property, including but not limited to "deleted" but recoverable email transmissions.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Produce copies of all communications and documents exchanged between you and the Texas Department of Housing and Community Affairs regarding the Subject Property or the Campanile., including but not limited to "deleted" but recoverable email transmissions.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce copies of all communications and documents exchanged between you and the City of Houston, including but not limited to the City of Houston Housing and Community Development Department and City of Houston , regarding the Subject Property or the Campanile.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: Produce copies of all communications and documents exchanged between you and Betco Housing Lab regarding the Subject Property or the Campanile.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: Produce copies of any and all email communications sent between you and Plaintiff relating to the Campanile, including but not limited to “deleted” but recoverable email transmissions.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: Produce copies of all original, revised and amended architectural, engineering, structural, and electrical plans for the Campanile.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: Produce copies of all building permits and building permit applications for the Campanile.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: Produce copies of all conveyance instruments executed by Jaymee to you relating to the Subject Property.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: Produce copies of all contracts and agreements executed between you and Jaymee.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: Produce copies of all communications and documents exchanged between you and any land surveyor regarding the Subject Property.

RESPONSE:

IV. FIRST REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: You intend to build a podium foundation structure in the 40-foot building line setback area describe in the 1980 Declaration.

RESPONSE:

REQUEST FOR ADMISSION NO. 2: The improvements you intend to build within the 40-foot building line setback area described in the 1980 Declaration will be above ground level.

RESPONSE:

REQUEST FOR ADMISSION NO. 3: The surface of the parking lot you intend to build within the 40-foot building line setback area described in the 1980 Declaration will be above ground level.

RESPONSE:

REQUEST FOR ADMISSION NO. 4: The Campanile will have at least one balcony facing the Briar Hollow Townhouses to the west.

RESPONSE:

REQUEST FOR ADMISSION NO. 5: The Campanile will have at least one exterior door facing the Briar Hollow Townhouses to the west.

RESPONSE:

REQUEST FOR ADMISSION NO. 6: The Campanile will have windows other than kitchen, bedroom or bathroom windows facing the Briar Hollow Townhouses to the west.

RESPONSE:

REQUEST FOR ADMISSION NO. 7: The Campanile will have kitchen windows larger than 5 feet by 6 feet in size facing the Briar Hollow Townhouses to the west.

RESPONSE:

REQUEST FOR ADMISSION NO. 8: The Campanile will have bathroom windows larger than 5 feet by 6 feet in size facing the Briar Hollow Townhouses to the west.

RESPONSE:

REQUEST FOR ADMISSION NO. 9: The Campanile will have bedroom windows larger than 5 feet by 6 feet in size facing the Briar Hollow Townhouses to the west.

RESPONSE:

2500 Fannin Street
Houston, Texas 77002

713.222.9000 *main*
713.229.8824 *fax*

rwilson@wcqlaw.com
713.547.8504 *direct*

October 5, 2020

Via Email: asteel@coatsrose.com
Certified Mail No. 7019 0700 0000 6231 5616
Return Receipt Requested
Andrea Hope J. Steel
Coats Rose
9 Greenway Plaza, Ste. 1000
Houston, Texas 77046

Re: Proposed Campanile on Briar Hollow

Easement Agreement dated June 2003 between Park Square Co-Owners' Association Inc., as Grantor, and Jaymee Joint Venture, as Grantee, regarding 1.1421 acres (proposed site for Campanile at Briar Hollow) recorded June 13, 2003 under Harris County Clerk's File No. W250869 in the Real Property Records of Harris County, Texas (the "**Easement Agreement**")

Dear Ms. Steel:

The correspondence of our firms and our respective clients makes it clear we have a dispute regarding the scope, limitations and requirements of the Easement Agreement.

Of paramount concern is the "Entry Work", as defined in Section 2 of the Easement Agreement. We say it is mandatory, but you say it is optional. Not only do we say it is mandatory, but further state that the completion of the Entry Work "so that the entrances to each building are separately served" (per Section 16 of the Easement Agreement) is a condition precedent to commencement of construction on your client's project.

There are a number of other items also in dispute regarding the Easement Agreement, including but not limited to, the proposed use of a portion of Park Square for a restricted fire lane, which is outside the scope of the ingress/egress easement.

You and your client have both repeatedly stated that the proposed project will fully comply with the Easement Agreement, yet the proposed plans and the actions of your client demonstrate either (i) confusion regarding the interpretation of the Easement Agreement, and/or (ii) unwillingness to comply. Please provide me and my client a copy of all plans and specifications for the project so we can confirm the extent of compliance or non-compliance with the Easement Agreement.

October 5, 2020

Page 2

You and your client have advised that the project is moving forward, plans are submitted to the City and acquisition of the adjacent site is pending.

Our dispute needs resolution and soon.

The Easement Agreement provides for alternative dispute resolution in lieu of litigation to resolve all disagreements.

Initially, the parties must submit to mediation. Therefore, we propose mediation with Judge Mark Davidson to occur within the next 30 days. If the dispute is not resolved at mediation, our client has directed us to file for binding arbitration with the American Arbitration Association under its Commercial Arbitration Rules. Section 12 of the Easement Agreement provides that the arbitration proceeding is to incur within 90 days of the appointment of the arbitrator. Our client is willing to comply with that requirement.

Jaymee Joint Venture, your seller and the signatory to the Easement Agreement, has not been a part of our dialogue about the project, but is a necessary party to any dispute resolution, therefore I have copied Jaymee's Houston Counsel, and request that he confirm that Jaymee will participate in the Mediation.

Sara Prasatik will be assisting with the mediation and all discussions regarding the procedural aspects of the mediation should be directed to her.

Very truly yours,

WILSON, CRIBBS & GOREN, P.C.


Reid C. Wilson

RCW/dms

cc: Al Hiller

Via Email: ahiller@spencerfane.com

Bill Turney

Via Email: wot4tex@gmail.com

Melvyn Anhalt

Via Email: danhalt@gmail.com

Sara Prasatik

Via Email: sprasatik@wcglaw.com

From: [Juli Gonzalez](#)
To: [Alena Morgan](#)
Cc: [Marni Holloway](#); [Ben Sheppard](#); [Lora Myrick](#); [Les Kilday](#)
Subject: RE: Campanile on Briar Hollow (TDHCA #20223)- RTP
Date: Wednesday, December 2, 2020 4:49:15 PM
Attachments: [RTP Penalty Waiver Request.pdf](#)

Hi, Alena.

I've attached the additional documentation explaining the hurdles we faced meeting the RTP deadline in more detail. Please let me know if you have any questions, or need any additional information. Your help is greatly appreciated.

Thank you,

[Juli Gonzalez](#)
Sr. Development Consultant
812 San Antonio, Suite L-14
Austin, Texas 78701
(830) 734-8330
www.betcohousinglab.com



From: Alena Morgan <alena.morgan@tdhca.state.tx.us>
Sent: Monday, November 30, 2020 5:30 PM
To: Juli Gonzalez <juli@betcohousinglab.com>
Cc: Marni Holloway <marni.holloway@tdhca.state.tx.us>; Ben Sheppard <ben.sheppard@tdhca.state.tx.us>; Lora Myrick <lora@betcohousinglab.com>; Les Kilday <les@kildayco.net>
Subject: RE: Campanile on Briar Hollow (TDHCA #20223)- RTP

Thank you for following up as requested.

Your request has been noted and will be included with our presentation to the Board in January. Please provide any additional information as soon as possible. I will confirm last possible dates and follow up as needed.

Thanks again for updating me regarding your concerns. We sincerely appreciate your willingness to work cooperatively with staff on this matter.

Best regards,

Alena R. Morgan, JD
Competitive (9%) Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 E. 11th St., Austin, TX 78701
Office: 512.936.7834

TDHCA COVID-19 ASSISTANCE: <https://www.tdhca.state.tx.us/covid19-response.htm>.

Any person receiving guidance from TDHCA staff should be mindful that, as set forth in 10 TAC §11.1(b), there are important limitations and caveats.

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

From: Juli Gonzalez <juli@betcohousinglab.com>

Sent: Monday, November 30, 2020 4:30 PM

To: Alena Morgan <alena.morgan@tdhca.state.tx.us>

Cc: Marni Holloway <marni.holloway@tdhca.state.tx.us>; Ben Sheppard <ben.sheppard@tdhca.state.tx.us>; Lora Myrick <lora@betcohousinglab.com>; Les Kilday <les@kildayco.net>

Subject: Campanile on Briar Hollow (TDHCA #20223)- RTP

Hi, Alena.

I wanted to follow up on our phone conversation and let you know Campanile on Briar Hollow isn't going to make the Readiness to Proceed deadline. Lora has had prior conversations with Marni regarding this development. We have not received loan documentation from City of Houston and there is also pending litigation from adjacent townhome and condo associations. We will be requesting a waiver of the penalty for not closing by today. By when do you need the supporting documentation for the January board meeting?

Thank you,

Juli Gonzalez

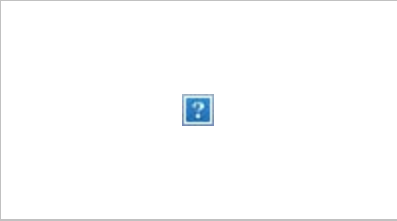
Sr. Development Consultant

812 San Antonio, Suite L-14

Austin, Texas 78701

(830) 734-8330

www.betcohousinglab.com



20248

Cedar Cove Apartments

Alena Morgan

From: Melissa Baughman <melissa.baughman@jfieser.com>
Sent: Thursday, November 19, 2020 4:50 PM
To: Marni Holloway
Cc: Jim Fieser; Jamie Fieser; robbye arxadvantage.net; Alena Morgan
Subject: Fieser Projects - Applications 20248 and 20281 - Readiness to Proceed Deadline
Attachments: Cedar Cove Apts_20248_FS-PR, LTD..pdf; Bayou Bend Apts_20281_FS-OB, LTD.pdf

Marni,

I have attached letters from Jim Fieser for both Cedar Cove (Application #20248) and Bayou Bend (Application #20281) outlining the reasons for the delay in our meeting the Readiness to Proceed closing deadline.

If you need any additional information, please let us know.

Sincerely,

Melissa Baughman – Sr Project Manager

Fieser Development, Inc.

715 East Main Street, Suite 100
Tomball, Texas 77375
281-419-6114

From: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Sent: Tuesday, November 17, 2020 3:44 PM
To: Melissa Baughman <melissa.baughman@jfieser.com>
Cc: Jim Fieser <jim.fieser@jfieser.com>; Jamie Fieser <jfieser@vgmmgt.com>; robbye arxadvantage.net <robbye@arxadvantage.net>; Alena Morgan <alena.morgan@tdhca.state.tx.us>
Subject: RE: Application 20248 _ FS-PR, LTD

Hi Melissa –

I'm hearing that other Applicants are in the same situation. Please send us a letter that can be included in our Board submission, describing the circumstances around the delay. We will take a Board item to the January meeting regarding all Applications that fail to meet the Readiness deadline. Staff doesn't recommend a penalty when the Applicant is able to show that the delay is the responsibility of a third party, such as USDA in this instance.

Let us know if there are any other questions.

Thanks,
Marni

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Reminder for Direct Loan Borrowers: TDHCA will not close earlier than 30 days after receipt of complete due diligence documents. We will not honor closings scheduled without our confirmation.

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.

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

From: Melissa Baughman <melissa.baughman@jfieser.com>
Sent: Tuesday, November 17, 2020 3:13 PM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Cc: Jim Fieser <jim.fieser@jfieser.com>; Jamie Fieser <jfieser@vgmmgt.com>; Melissa Baughman <melissa.baughman@jfieser.com>; robbye arxadvantage.net <robbye@arxadvantage.net>
Subject: Application 20248 _ FS-PR, LTD

Marnie,

I saw that you were copied on the email that I received from Lauryn Enrico, Director of Production and Preservation Division at USDA Rural Development regarding our Application #20248 (Applicant FS-PR, LTD) for Cedar Cove Apartments. We elected the points in our HTC Application for Readiness to Proceed, but unfortunately with the USDA MFH Realignment they are unable to close by the 11/30/2020 deadline.

We would like to request a consideration for no penalty assessment for this application #20248 because the USDA realignment was not foreseeable and was not within the control of the Applicant.

Sincerely,

Melissa Baughman – Sr Project Manager

Fieser Development, Inc.

715 East Main Street, Suite 100
Tomball, Texas 77375
281-419-6114

From: Conway, Nancy - RD, Phoenix, AZ <nancy.conway@usda.gov>
Sent: Tuesday, November 17, 2020 2:36 PM
To: Melissa Baughman <melissa.baughman@jfieser.com>
Subject: MFH Realignment

To: <<Applicantmelissa.baughman@jfieser.com Email>>
CC: <<HFmarni.holloway@tdhca.state.tx.us Email>>

Dear <<Applicant FS-PR LDName>>,

We wanted to reach out and discuss end of year timelines for your transaction. As you are aware, we recently went through a reorganization and some functional realignments. We have now had the opportunity to review all documentation associated with your transaction. Based on the current information available, your application may not meet your proposed closing deadline. If there is additional funding, such as Low-Income Housing Tax Credits (LIHTC), associated with your transaction, please ensure you are able to receive an extension. If there are any issues with outside additional funding, we are happy to communicate directly with the Housing Finance Agency or other capital provider to

explain the need for an extension. Please reach out to <<Branch CCJ Michelsoncontact Name>> at <<Branch Ecj.michels@usda.gov>> to discuss timelines further.

Sincerely,

Lauryn

Lauryn Enrico
Director, Production and Preservation Division
Multifamily Housing Programs
Rural Development
United States Department of Agriculture
Phone 202.401.0007
www.rd.usda.gov | “Committed to the future of rural communities”

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FIESER DEVELOPMENT, INC.

715 East Main, Ste 100
Tomball, Texas 77375
281-419-6114

November 19, 2020

TDHCA
Attn: Marni Holloway
Director of Multifamily Finance
221 East 11th Street
Austin, TX 78701-2410

RE: Cedar Cove Apartments (20248)

Ms. Holloway,
FS-PR, LTD. (Applicant) received a Housing Tax Credit award in the 2020 HTC Application round for Cedar Cove Apartments. We elected the points for Readiness to Proceed, which means we are required to close on or before November 30, 2020. Cedar Cove has an existing USDA 515 Loan.

Per instructions from the USDA State Office, we were asked to submit our Transfer Application on a disc or flash drive and send to the State Office, but due to COVID-19, USDA staff was now working remotely from home. On February 20, 2020, we submitted our USDA Transfer Application to the Texas State Office. On February 26, 2020 we received the letter from USDA required for our Housing Tax Credit Application. That same day Amanda Ayers at USDA State Office asked us to resubmit the Transfer Application so that each Section was an individual pdf file. This was done and a new flash drive was overnighted on March 3, 2020.

The next contact that we had with USDA was on July 16, 2020 when TDHCA Underwriting Staff notified us they needed clarification from USDA on the Appraisal Valuation. We contacted Amanda Ayers and she responded to TDHCA Underwriting that same day. In August 2020 USDA began their review of the Capital Needs Assessment, Construction Documents (Plans & Specifications), Appraisal, Architect Agreement & Contractor Agreement. In September 2020 we first learned of the USDA Realignment. On October 13, 2020, the Texas Realignment of MFH Programs was moved to a National Model.

On October 15, 2020 we received the contact information for the new Processing Branch of USDA for the Transfer Application for Cedar Cove Apartments. We reached out to the contact to find out who our new contact would be for the Transfer Application. On November 3, 2020, the Processing Person assigned to Cedar Cove contacted us. The contact informed us that it would take them some time to review the complete Application, that it appeared the only thing approved by the Texas State Office was the Capital Needs Assessment, Appraisal, Plans & Specifications, Architect Agreement and Contractor Agreement. We had a conference call with our Processor on November 3rd and the items still left to be reviewed were regarding the Management Agent review. They also had to complete their Environmental Review,

Organizational Structure Review & Previous Participation Review. It is our understanding that once the Processor completes their review, it goes to the Underwriter assigned to the Project and the final step will be Closing.

During this process, we have continued to work with our Construction Lender, Syndicator and 538 Lender to meet the November 30, 2020 deadline. In fact, our proposed closing date was set for November 20, so we could close prior to Thanksgiving. We spoke to our USDA Processor about our deadline of November 30, 2020 and was told they would not be able to meet that date, that late January 2021 would be a more realistic target for closing.

On November 17, 2020 we received an email from Lauryn Enrico, Director, Production and Preservation Division - MFH Program, USDA Rural Development informing us that USDA would be unable to meet our proposed closing date "due to the reorganization and functional realignments in USDA".

We would like to request a consideration for no penalty assessment for Application #20248 due to the USDA realignment not being foreseeable and was totally out of the control of the Applicant.

Thank you for your consideration and please let us know if you or the Board require any additional information.

Sincerely,



James W. Fieser
President

Sent via email

20251

Mathis Apartments

From: [Marni Holloway](#)
To: [Alena Morgan](#)
Subject: FW: Mathis Apartments #20251 Readiness to Proceed Penalty Waiver
Date: Tuesday, November 3, 2020 11:05:44 AM
Attachments: [LT Marni Holloway.11.3.20.Mathis Apartments.pdf](#)

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

Reminder for Direct Loan Borrowers: TDHCA will not close earlier than 30 days after receipt of complete due diligence documents. We will not honor closings scheduled without our confirmation.

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.

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

From: murraycalhoun@mac-rellc.com <murraycalhoun@mac-rellc.com>
Sent: Tuesday, November 03, 2020 10:13 AM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Cc: Robbye Meyer <robbye@arxadvantage.net>; Jay Rabalais <jrabalais@mac-rellc.com>; Jason Rabalais <jarabalais@mac-rellc.com>
Subject: Mathis Apartments #20251 Readiness to Proceed Penalty Waiver

Marni:

I write to give TDHCA advance notice with the hope to mitigate penalties for failure to meet the readiness to proceed criteria due to circumstances beyond our control.

As reasons more full explained in the attachment:

- This Summer USDA-Rural Development announced a major reorganization of its multifamily program into regions. This reorganization took underwriting review of loan transfer application from the Texas State Office into a Southern Region that includes Texas
- The Southern Region was not established until last month
- The Texas State Office did no underwriting of the Mathis application during transition to the Southern Region

Tammy Daniels, the Acting Branch Chief for the Southern Region, told me yesterday that it is not clear what analyst has been assigned to the Mathis application or the extent of any review

- This reorganization took place while COVID procedures were in place where RD State Office employees had to learn to adapt and work remotely

We are confident Mathis will close with RD. It has 90% rent assisted units, is 100% occupied and will take on no new debt in the transfer. Mathis will close; it just will not be able to close by November 30, 2020 due to the RD reorganization and COVID protocols that are matters beyond our control.

I am available to discuss the readiness to proceed penalty waiver at your convenience.

Best

Murray

Murray A. Calhoun
MAC Real Estate, L.L.C.
Lymac, L.L.C.
Lymac Construction Company, L.L.C.
3224 26th Street
Metairie, LA 70002
O: (504) 561-1172
C: (504) 343-8663
Email: murraycalhoun@mac-rellc.com



MAC REAL ESTATE, LLC
Professional Management Company
3224 26th Street
Metairie, LA 70002
Phone: 504.561.1172 ♦♦♦ Fax: 504.832.2932

November 3, 2020

VIA EMAIL (Marni.Holloway@tdhca.state.tx.us)

Ms. Marni Holloway
TDHCA Director of Multifamily Finance
221 East 11th Street
Austin, Texas 78701-2410

Re: ***Mathis Apartments #20251***
Readiness to Proceed Penalty Waiver

Dear Ms. Holloway:

Mathis Affordable Housing, LP (“Mathis”) selected “readiness to proceed” points in the 2020 QAP application round with every intention of closing a transfer with USDA-Rural Development on or before November 30, 2020. Our construction lender and syndicator are aware of the deadline and ready to close, but they condition their closings on the RD closing.

I write to give TDHCA advance notice with the hope to mitigate penalties for failure to meet the readiness to proceed due to circumstances beyond our control.

Yesterday I raised the readiness to proceed issue in an email exchange with Kenneth Earl, Finance Specialist at the Texas State Office in Temple, and Tammy Daniels, the newly appointed Acting Branch Chief in Washington, D.C. Based upon these emails (a copy is attached) and a telephone call with Ms. Daniels, Mathis will not meet the November 30 closing deadline. Ms. Daniel suggests that the Mathis file has been assigned to an analyst, but it is doubtful that it has been given a meaningful review.

Mathis filed the RD transfer application on February 18, 2020 at the RD Texas State Office. Under normal circumstances, the application would have been reviewed, the loan approved and transferred and a notice to proceed issued. However, the year 2020 has been nothing but normal.

The Mathis application has faced headwinds since February:

- COVID 19 cropped up in the Spring that emptied out the RD State Office and employees had to learn to adapt and work remotely



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MAC REAL ESTATE, LLC

Marni Holloway
November 3, 2020
Page 2

- Then this Summer the RD National Office announced a major realignment of its Multifamily Housing Program (“MFH”) where closing responsibility was taken out of the state offices
- The Southern Region that covers Texas was not established until last month and based upon my conversation with Ms. Daniels, it not clear who is the analyst to review the application or if any review has taken place
- In the midst of these bureaucratic changes, our regular closing analyst at the Texas State Office, Amanda Ayers, was reassigned in the reorganization to another department

The Mathis transfer application was under underwriting and architectural standards review at the Texas State Office when RD announced on July 7, 2020 that it intended to reorganize the “MFH program into an integrated model with specialized teams.” The transition took place in 2 waves. The first wave was the establishment of a Northeast Region; the second wave that created a Southern Region that includes Texas was announced on October 2, 2020. The Underwriting Branch Chief for the Southern Region was vacant at the time of this announcement and we learned only yesterday that Ms. Daniels was now the acting chief. In speaking to Ms. Daniels yesterday, we both agreed that the underwriting procedure is completely new and full of unknowns at this time and difficult to predict how long it will take for analysts to acclimate themselves to the new procedures to complete the Mathis application review.

The architectural review of Mathis remained with the Texas State Office throughout this reorganization. The State Architect has completed his review of the rehabilitation and confirmed that the rehabilitation meets design standards.

On the other hand, the financial underwriting review has lagged as the Mathis application bounces around the RD bureaucracy in the reorganization. In summary (based upon the attached emails):

- The Mathis application was taken out of the Texas State Office and assigned to the Southern Region this Fall with no underwriting taking place during the transition
- Ms. Daniels has confirmed receipt of the Mathis application in Branch 2, but there is no named analyst and there is no information of the extent of review
- Mr. Earl of the Texas State Office informed TDHCA that there may be issues in meeting the closing deadline for 2020 applications due to the reorganization

We are confident that RD will work out the kinks in its reorganization and the Mathis transfer application will be approved. Mathis has 90% rent assisted units, is 100% occupied and will take on no new debt in the transfer. As soon as we close with RD, we will notify TDHCA and provide closing documents.

MAC REAL ESTATE, LLC

Marni Holloway
November 3, 2020
Page 3

Based upon these reasons, we ask for relief from or waiver for any penalties for a missed closing deadline for Mathis. We made a good faith election in our application to close by November 30 and foresaw no impediment based upon our history with RD. However, the COVID pandemic and RD reorganization have proven to be events beyond our control that we are powerless to overcome. Our construction lender and syndicator (WNC) are ready to meet the deadline, but they both condition a final closing on the RD transfer.

I am available to discuss the readiness to proceed penalty waiver at your convenience. Thanking you for your courtesies, I remain,

Yours truly,

A handwritten signature in blue ink, appearing to read 'Murray A. Calhoun', with a long horizontal flourish extending to the right.

Murray A. Calhoun

From: Daniels, Tammy - RD, Washington, DC <tammy.daniels@usda.gov>
Sent: Monday, November 2, 2020 2:33 PM
To: murraycalhoun@mac-rellc.com; Earl, Kenneth - RD, Temple, TX
Cc: 'Jason Rabalais'; 'Jay Rabalais'
Subject: RE: Mathis Affordable Housing LP

Murray,

Thank you for the conversation today. Your application (The Mathis Apartments) will first be reviewed by this Branch. Upon determination that the application is complete, it will be forwarded to our Underwriting Branch. While I cannot, give you a completion date, it may be highly unlikely that we will meet the November 30th closing date.

Tammy S. Daniels
Finance and Loan Analyst
Processing and Report Review Branch
Production and Preservation Division
Multi-Family Housing Programs
Rural Development
United States Department of Agriculture
Phone: 202.720.0021
www.rd.usda.gov

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From: murraycalhoun@mac-rellc.com <murraycalhoun@mac-rellc.com>
Sent: Monday, November 2, 2020 1:27 PM
To: Earl, Kenneth - RD, Temple, TX <kenneth.earl@usda.gov>
Cc: 'Jason Rabalais' <jrabalais@mac-rellc.com>; 'Jay Rabalais' <jrabalais@mac-rellc.com>; Daniels, Tammy - RD, Washington, DC <tammy.daniels@usda.gov>
Subject: RE: Mathis Affordable Housing LP

Hey Kenneth:

I'm not angry and understand the delay. I'm acting out of my own self interest to avoid a penalty with TDHCA and I appreciate the State Office giving us cover.

I'm sure the Processing Branch is making headway on the application and I appreciate any updates when they are available.

Best

Murray

Murray A. Calhoun
MAC Real Estate, L.L.C.
Lymac, L.L.C.
Lymac Construction Company, L.L.C.
3224 26th Street
Metairie, LA 70002
O: (504) 561-1172
C: (504) 343-8663
Email: murraycalhoun@mac-rellc.com

From: Earl, Kenneth - RD, Temple, TX <kenneth.earl@usda.gov>
Sent: Monday, November 2, 2020 12:30 PM
To: murraycalhoun@mac-rellc.com
Cc: Jason Rabalais <jarabalais@mac-rellc.com>; Jay Rabalais <jrabalais@mac-rellc.com>; Daniels, Tammy - RD, Washington, DC <tammy.daniels@usda.gov>
Subject: RE: Mathis Affordable Housing LP

Murray:

You will have to contact the Processing Branch on when they may be able to process the application and forward to underwriting.

After underwriting is completed, it will be forwarded to the Closing Branch.

I have copied Tammy Daniels on this email, she is the Acting Branch Chief of Processing Branch 2.

Unfortunately, the application was not reviewed by the Texas staff prior to the restructuring of the MFH programs.

The State Office informed TDHCA a while back that there may be some issues with closing the 2020 transfers by the November 30 deadline.

I recommend that you do keep TDHCA informed. TDHCA informed us that if a owner gets penalized on next years deals due to RD not being able to meet the closing date that they would accept notification from the Agency that it was not the applicants fault for the delay and not penalize the applicant.

I regret that these transactions were not completed by the staff office prior. Hopefully your transactions will be processed as soon as possible.

Thank you

Kenneth Earl
Finance and Loan Analyst
Production and Preservation Division
Underwriting Branch 2
United States Department of Agriculture
Phone: 254.742.9766
www.rd.usda.gov/tx

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From: murraycalhoun@mac-rellc.com <murraycalhoun@mac-rellc.com>
Sent: Monday, November 2, 2020 10:47 AM
To: Earl, Kenneth - RD, Temple, TX <kenneth.earl@usda.gov>
Cc: Jason Rabalais <jarabalais@mac-rellc.com>; Jay Rabalais <jrabalais@mac-rellc.com>
Subject: Mathis Affordable Housing LP

Hello Kenneth:

Mathis Affordable Housing, LP has a pending transfer application that includes a request to close by the end of this month to satisfy TDHCA "readiness to proceed" requirements.

I am aware of RD's major restructuring of personnel, but I am unsure how this will impact our ability to meet a November 30 closing date. We do not have a loan approval so I am not confident that we can close. However, RD is the best source of whether a closing is possible.

If a closing date before month end is not realistic, I think it best to notify TDHCA early as possible so that I may get relief from any penalties. With RD permission, I would suggest to TDHCA that RD has undergone a major restructuring of personnel during the Fall and they are not yet fully in place to move the transfer application along in the same manner as before the restructuring. Furthermore, unanticipated delays have arisen due to remote working due to COVID.

It would be a big help if you could shed some light on our situation and nobody is offended if I shift some of the blame to RD.

Murray

Murray A. Calhoun
MAC Real Estate, L.L.C.
Lymac, L.L.C.
Lymac Construction Company, L.L.C.
3224 26th Street
Metairie, LA 70002
O: (504) 561-1172
C: (504) 343-8663
Email: murraycalhoun@mac-rellc.com

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From: Rural Development <ruraldevelopment@public.govdelivery.com>
Sent: Tuesday, July 7, 2020 12:40 PM
To: mcalhoun@mac-rellc.com
Subject: Multifamily Housing Wave 1 Go-Live Announcement



Multifamily Housing

July 7, 2020

To continue to meet the increasing demand for safe and affordable multifamily rental housing in rural America, Multifamily Housing (MFH) Leadership has reorganized MFH programs into an integrated model with specialized teams.

This integration will allow MFH to establish streamlined business processes, provide consistent and predictable work for staff, and improve customer service to you. I am sending this note to provide **an overview** of the MFH Integration.

The transition to the integrated model will occur in two waves. Yesterday, July 6, 2020, the first wave launched in the National Office and the Northeast region (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and West Virginia). The second wave will include the remaining states in the South, Midwest, and West regions and is scheduled to launch in early October 2020.

In the new model, all MFH staff will be aligned to 1 of 3 integrated divisions: Field Operations Division, Production & Preservation Division, and Asset Management Division. The table below outlines a brief description of each of these integrated divisions:

Overview of Future State Divisions	
Field Operations Division	The Field Operations division is organized regionally with teams delivering routine servicing and troubled asset servicing remaining in their current duty station in the field to maintain a local presence. This team will report through a regional structure up to divisional leaders.
Production & Preservation Division	The Production & Preservation division will process, underwrite, and close all multifamily direct, preservation, and guaranteed loan transactions. Each branch will support all the MFH programs, including 515, 538, Multifamily Preservation and Revitalization (MPR), prepayments, and preservation efforts. This division will also oversee Notice of Solicitation of Applications (NOSA) drafting and administration efforts for Farm Labor Housing, Housing Preservation Grants, MPR, technical assistance, and 515.
Asset Management Division	The Asset Management division will oversee portfolio risk and overall portfolio health, with regionally aligned servicing teams to support field operations and the use of the new risk-ranking effort.

In the National Office, we are pleased to announce the future state leadership team:

- Adam Hauptman – Assistant Deputy Administrator
- Lauryn Enrico – Director, Production & Preservation Division
- Jen Larson – Director, Asset Management Division

In the Northeast Region, Laurie Warzinski is our Acting Field Operations Division Director. In this role, Laurie will provide leadership for all Field Operations staff in the Northeast Region. Each servicing team in the NE Field Operations Division will be supervised by a team lead reporting to Laurie.

Thank you in advance for your support as we transition into our new integrated model. We are confident that the new organizational structure will better meet your needs and, in turn, the needs of rural America.

Nancie-Ann Bodell
Deputy Administrator
Multifamily Housing

For COVID-19 guidance...

- [Rural Development COVID-19 Response](#)

For program information...

- [Farm Labor Direct Loans & Grants](#)
- [Housing Preservation & Revitalization Demonstration Loans & Grants](#)
- [Housing Preservation Grants](#)
- [Multi-Family Housing Direct Loans](#)
- [Multi-Family Housing Loan Guarantees](#)
- [Multi-Family Housing Rental Assistance](#)
- [Rural Housing Site Loans](#)



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From: Rural Development <ruraldevelopment@public.govdelivery.com>
Sent: Friday, October 2, 2020 10:47 AM
To: mcalhoun@mac-rellc.com
Subject: Multi-Family Housing Regional Directors



Multi-Family Housing

WASHINGTON, October 2, 2020 — Effective October 11, 2020, Becki Meyer, Byron Waters, Karissa Stiers, and Laurie Warzinski, will become the first Regional Directors of USDA Rural Development’s Multifamily Housing Field Operations Division

The Field Operations Division was created as part of the Multifamily Housing organizational realignment, which will improve customer service delivery, facilitate consistent program implementation and increase oversight of the portfolio through the use of modern-day risk-based servicing tools.

Becki, Byron, Karissa and Laurie will lead Field Operations staff in teams throughout the country, performing day to day servicing tasks, addressing owner, tenant, or other stakeholder needs, and monitoring property performance to ensure compliance with Multifamily Housing’s financial and physical requirements. The Regional Directors will provide asset management oversight and policy direction to their teams, with guidance from Jen Larson’s new Asset Management Division, and will also support our preservation and affordable housing production mission goals, led by Lauryn Enrico in our new Production and Preservation Division.

Our four new Regional Directors bring extensive yet diverse leadership experience and will apply those skills as they lead their teams through the standup of our new Field Operations Division and into the future of Multifamily Housing within Rural Development. Each Regional Director will report to Ernie Wetherbee, Director, Field Operation Division.

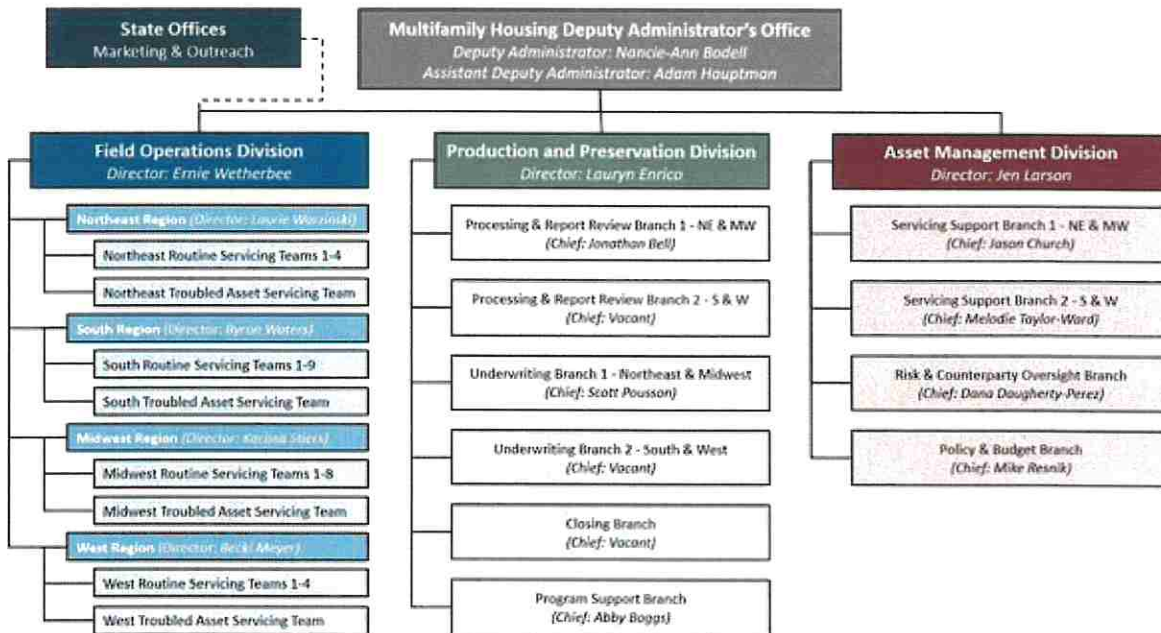
USDA Rural Development encourages Multifamily Housing stakeholders and partners to reach out to their Regional Director to build on existing partnerships and forge new ones. Below you will find their contact information along with the new MFH organizational chart.

Becki Meyer, Regional Director, Western Region, Becki.meyer@usda.gov
(AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY)

Byron Waters, Regional Director, Southern Region, Byron.waters@usda.gov
(AL, AR, FL, GA, KY, LA, MS, NC, OK, PR, SC, TN, TX, VI)

Karissa Stiers, Regional Director, Midwest Region, Karissa.stiers@usda.gov
(IA, IL, IN, KS, MI, MN, MO, ND, NE, OH, SD, WI)

Laurie Warzinski, Regional Director, Northeast Region, Laurie.warzinski@usda.gov
(CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV)



For program information...

- [Farm Labor Direct Loans & Grants](#)
- [Housing Preservation & Revitalization Demonstration Loans & Grants](#)
- [Housing Preservation Grants](#)
- [Multi-Family Housing Direct Loans](#)
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20281

Bayou Bend Apartments

Alena Morgan

From: Melissa Baughman <melissa.baughman@jfieser.com>
Sent: Thursday, November 19, 2020 4:50 PM
To: Marni Holloway
Cc: Jim Fieser; Jamie Fieser; robbye arxadvantage.net; Alena Morgan
Subject: Fieser Projects - Applications 20248 and 20281 - Readiness to Proceed Deadline
Attachments: Cedar Cove Apts_20248_FS-PR, LTD..pdf; Bayou Bend Apts_20281_FS-OB, LTD.pdf

Marni,

I have attached letters from Jim Fieser for both Cedar Cove (Application #20248) and Bayou Bend (Application #20281) outlining the reasons for the delay in our meeting the Readiness to Proceed closing deadline.

If you need any additional information, please let us know.

Sincerely,

Melissa Baughman – Sr Project Manager

Fieser Development, Inc.

715 East Main Street, Suite 100
Tomball, Texas 77375
281-419-6114

From: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Sent: Tuesday, November 17, 2020 3:44 PM
To: Melissa Baughman <melissa.baughman@jfieser.com>
Cc: Jim Fieser <jim.fieser@jfieser.com>; Jamie Fieser <jfieser@vgmmgt.com>; robbye arxadvantage.net <robbye@arxadvantage.net>; Alena Morgan <alena.morgan@tdhca.state.tx.us>
Subject: RE: Application 20248 _ FS-PR, LTD

Hi Melissa –

I'm hearing that other Applicants are in the same situation. Please send us a letter that can be included in our Board submission, describing the circumstances around the delay. We will take a Board item to the January meeting regarding all Applications that fail to meet the Readiness deadline. Staff doesn't recommend a penalty when the Applicant is able to show that the delay is the responsibility of a third party, such as USDA in this instance.

Let us know if there are any other questions.

Thanks,
Marni

Marni Holloway

Multifamily Finance Director
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
(512) 475-1676

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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.

About TDHCA

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From: Melissa Baughman <melissa.baughman@jfieser.com>
Sent: Tuesday, November 17, 2020 3:13 PM
To: Marni Holloway <marni.holloway@tdhca.state.tx.us>
Cc: Jim Fieser <jim.fieser@jfieser.com>; Jamie Fieser <jfieser@vgmmgt.com>; Melissa Baughman <melissa.baughman@jfieser.com>; robbye arxadvantage.net <robbye@arxadvantage.net>
Subject: Application 20248 _ FS-PR, LTD

Marnie,

I saw that you were copied on the email that I received from Lauryn Enrico, Director of Production and Preservation Division at USDA Rural Development regarding our Application #20248 (Applicant FS-PR, LTD) for Cedar Cove Apartments. We elected the points in our HTC Application for Readiness to Proceed, but unfortunately with the USDA MFH Realignment they are unable to close by the 11/30/2020 deadline.

We would like to request a consideration for no penalty assessment for this application #20248 because the USDA realignment was not foreseeable and was not within the control of the Applicant.

Sincerely,

Melissa Baughman – Sr Project Manager

Fieser Development, Inc.

715 East Main Street, Suite 100
Tomball, Texas 77375
281-419-6114

From: Conway, Nancy - RD, Phoenix, AZ <nancy.conway@usda.gov>
Sent: Tuesday, November 17, 2020 2:36 PM
To: Melissa Baughman <melissa.baughman@jfieser.com>
Subject: MFH Realignment

To: <<Applicantmelissa.baughman@jfieser.com Email>>
CC: <<HFmarni.holloway@tdhca.state.tx.us Email>>

Dear <<Applicant FS-PR LDName>>,

We wanted to reach out and discuss end of year timelines for your transaction. As you are aware, we recently went through a reorganization and some functional realignments. We have now had the opportunity to review all documentation associated with your transaction. Based on the current information available, your application may not meet your proposed closing deadline. If there is additional funding, such as Low-Income Housing Tax Credits (LIHTC), associated with your transaction, please ensure you are able to receive an extension. If there are any issues with outside additional funding, we are happy to communicate directly with the Housing Finance Agency or other capital provider to

explain the need for an extension. Please reach out to <<Branch CCJ Michelsoncontact Name>> at <<Branch Ecj.michels@usda.gov>> to discuss timelines further.

Sincerely,

Lauryn

Lauryn Enrico
Director, Production and Preservation Division
Multifamily Housing Programs
Rural Development
United States Department of Agriculture
Phone 202.401.0007
www.rd.usda.gov | “Committed to the future of rural communities”

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FIESER DEVELOPMENT, INC.

715 East Main. Ste 100
Tomball, Texas 77375
281-419-6114

November 19, 2020

TDHCA
Attn: Marni Holloway
Director of Multifamily Finance
221 East 11th Street
Austin, TX 78701-2410

RE: Bayou Bend Apartments (20281)

Ms. Holloway,
FS-OB, LTD. (Applicant) received a Housing Tax Credit award in the 2020 HTC Application round for Bayou Bend Apartments. We elected the points for Readiness to Proceed, which means we are required to close on or before November 30, 2020. Bayou Bend has an existing USDA 515 Loan.

Per instructions from the USDA State Office, we were asked to submit our Transfer Application on a disc or flash drive and send to the State Office, but due to COVID-19, USDA staff was now working remotely from home. On February 20, 2020, we submitted our USDA Transfer Application to the Texas State Office. On February 26, 2020 we received the letter from USDA required for our Housing Tax Credit Application. That same day Amanda Ayers at USDA State Office asked us to resubmit the Transfer Application so that each Section was an individual pdf file. This was done and a new flash drive was overnighted on March 3, 2020.

The next contact that we had with USDA was on July 16, 2020 when TDHCA Underwriting Staff notified us they needed clarification from USDA on the Appraisal Valuation. We contacted Amanda Ayers and she responded to TDHCA Underwriting that same day. In August 2020 USDA began their review of the Capital Needs Assessment, Construction Documents (Plans & Specifications), Appraisal, Architect Agreement & Contractor Agreement. In September 2020 we first learned of the USDA Realignment. On October 13, 2020, the Texas Realignment of MFH Programs was moved to a National Model.

On October 15, 2020 we received the contact information for the new Processing Branch of USDA for the Transfer Application for Bayou Bend Apartments. We reached out to the contact to find out who our new contact would be for the Transfer Application. On November 3, 2020, the Processing Person assigned to Bayou Bend contacted us. The contact informed us that it would take them some time to review the complete Application, that it appeared the only thing approved by the Texas State Office was the Capital Needs Assessment, Appraisal, Plans & Specifications, Architect Agreement and Contractor Agreement. We had a conference call with our Processor on November 3rd and the items still left to be reviewed were regarding the Management Agent review. They also had to complete their Environmental Review,

Organizational Structure Review & Previous Participation Review. It is our understanding that once the Processor completes their review, it goes to the Underwriter assigned to the Project and the final step will be Closing.

During this process, we have continued to work with our Construction Lender, Syndicator and 538 Lender to meet the November 30, 2020 deadline. In fact, our proposed closing date was set for November 20, so we could close prior to Thanksgiving. We spoke to our USDA Processor about our deadline of November 30, 2020 and was told they would not be able to meet that date, that late January 2021 would be a more realistic target for closing.

On November 17, 2020 we received an email from Lauryn Enrico, Director, Production and Preservation Division - MFH Program, USDA Rural Development informing us that USDA would be unable to meet our proposed closing date "due to the reorganization and functional realignments in USDA".

We would like to request a consideration for no penalty assessment for Application #20281 due to the USDA realignment not being foreseeable and was totally out of the control of the Applicant.

Thank you for your consideration and please let us know if you or the Board require any additional information.

Sincerely,



James W. Fieser
President

Sent via email

20329

Fishpond at Huntsville

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
December 10, 2020

Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2020-1 Multifamily Direct Loan Notice of Funding Availability to 9% Housing Tax Credit Layered Applications

RECOMMENDED ACTION

WHEREAS, the Board previously authorized the release of the 2020-1 Multifamily Direct Loan Notice of Funding Availability (NOFA) for up to \$13,864,168 with the application acceptance period beginning on January 13, 2020;

WHEREAS, the NOFA has since been amended several times to increase the amount available to \$43,312,142.20;

WHEREAS, Application #20329, which was received on April 1, 2020, under the 2020-1 NOFA, has requested \$350,000 in Direct Loan funds for Fish Pond at Huntsville, and has received complete reviews for compliance with program and underwriting requirements and was previously awarded \$900,000 in Competitive Low-Income Housing Tax Credits (LIHTC) and \$2,650,000 in Direct Loan funds on July 23, 2020;

WHEREAS, in accordance with 10 TAC §1.301(f)(1), the compliance history is designated as a Category 1 and deemed acceptable without conditions by the Executive Award and Review Advisory Committee (EARAC);

WHEREAS, the original LIHTC Application requested 5 points under Readiness to Proceed, 10 TAC §11.9(c)(8), which required that all financing close and the construction contract be executed on or before the last business day of November;

WHEREAS, the Applicant timely completed all requirements for this award recommendation to appear on the November 5, 2020, Board Agenda, and staff oversight caused the item to not appear at that meeting;

WHEREAS, because Applicant's failed to close by deadline described in 10 TAC §11.9(c)(8) due to staff error and through no fault of their own, staff recommends that no penalty be imposed;

WHEREAS, 10 TAC §13.5(h)(2) requires Applications for Developments previously awarded funds by the Department in the last 15 years (regardless of fund source) to be found eligible by the Executive Director;

WHEREAS, this Application provided evidence of circumstances beyond the Applicant's control that could not have been prevented with appropriate due diligence, including increased labor and material costs as a result of record low unemployment in the area and high demand for building materials, as criteria for the Executive Director to consider in affirming their eligibility;

WHEREAS, the Executive Director has found this Application to be eligible;

WHEREAS, staff recommends awarding \$350,000 in Direct Loan funds in addition to the original award of \$2,650,000 in Direct Loan funds; and

NOW, therefore, it is hereby

RESOLVED, that the Applicant will not receive a penalty under the requirements of 10 TAC §11.9(c)(8) related to Readiness to Proceed;

FURTHER RESOLVED, of an award of \$350,000 in Direct Loan funds from the 2020-1 NOFA for Fish Pond at Huntsville, bringing the total funds awarded to the proposed Development to \$3,000,000, is hereby approved in the form presented at this meeting; and

FURTHER RESOLVED, that the Board's approval is conditioned upon satisfaction of all conditions of underwriting, and completion of any other reviews required to assure compliance with the applicable HOME rules and requirements.

BACKGROUND

On December 12, 2019, the Board approved issuance of the 2020-1 NOFA for up to \$13,846,168, which has subsequently been amended to increase the amount available to \$43,312,142.20 within three set-asides:

- \$29,465,974.20 of National Housing Trust Fund in the Soft Repayment set-aside,
- \$13,846,168 of HOME funds in the General set-aside.

Fish Pond at Huntsville was awarded \$2,650,000 in HOME funds on July 23, 2020, which proposed new construction of 48 one- and two- bedroom units for an elderly population in Huntsville. The Applicant encountered circumstances beyond their control that could not have been prevented or foreseen after the original Direct Loan award, due to a 5% decrease in the rents for Walker County with a potential gross rent decrease from \$382K to \$363K. Total development costs increased \$136,073, and Hard Construction Cost increased \$115,786.

Staff is recommending the Board's approval of Fish Pond at Huntsville's additional Direct Loan Application (20329) for additional Direct Loan funds in the amount of \$350,000 (for total loan awards from the Department of \$3,000,000) as a deferred forgivable loan at 2% interest rate with a 15 year term and a 40 year amortization period under the General Set-Aside.

This application has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

The additional award was planned to appear on the agenda at the November 5, 2020, Board meeting. Staff error led to the Application being left off, so that the Applicant did not have access to the full amount of funds needed to timely close their financing in accordance with the Readiness to Proceed deadline. Because the delay was caused by staff error, and not by any action of the Applicant, staff is recommending that no penalty be imposed under this scoring item.

Organizational and Site Control Structure: The borrower/applicant is Fish Pond Living at Huntsville, L.P.. and includes entities and principals as indicated in the organization chart below. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by EARAC. Project Transitions, Inc. will own the property.

Public Comment: There have been no letters of support or opposition received by the Department in connection with this current application.

1e

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
JANUARY 14, 2021

Presentation, Discussion and Possible Action on an Extension to the Release of Coronavirus Aid, Relief, and Economic Security Act Low Income Home Energy Assistance Program Funds Held in Emergency Reserve and Authorization to Award Such Funds

RECOMMENDED ACTION

WHEREAS, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provides relief for individuals and businesses negatively impacted by COVID-19;

WHEREAS, Title VIII of the CARES Act provided supplemental formula funding to states to carry out activities of the Low Income Home Energy Assistance Program (LIHEAP) to prevent, prepare for, and respond to COVID-19;

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is designated the recipient of the CARES Act LIHEAP funding for the State of Texas and received approximately \$94 million in LIHEAP CARES funding from the U.S. Department of Health and Human Services (USHHS) which must be expended by September 30, 2021;

WHEREAS, at the Board Meeting of April 23, 2020, the Board awarded the majority of these funds to subrecipients, but specified that 9% of the LIHEAP CARES funding be held in reserve until August 31, 2020, for any future allowable use or incentive awards;

WHEREAS, at the Board Meeting of September 3, 2020, staff requested an extension to the release of the reserve funds until November 30, 2020, because expenditures had not yet reached a level to clearly identify which subrecipients would best be able to utilize the funds;

WHEREAS, to ensure that the 9% of funds is directed to those agencies most able to utilize those funds and those agencies are still not clearly identifiable due to few agencies having reached high expenditure levels, staff is recommending that the timeframe in which to award the LIHEAP reserve funds be extended from November 30, 2020, to no later than April 30, 2021; and

WHEREAS, staff also recommends that the Executive Director be authorized to make the award decisions on these funds within the pool of already awarded subrecipients based on a subrecipient's ability to efficiently utilize the funds before expiration and such awards will be reported to the Board;

NOW, therefore, it is hereby

RESOLVED, that the deadline by which to make awards of the LIHEAP CARES reserve funds is hereby extended until no later than April 30, 2021; and

FURTHER RESOLVED, that the Executive Director and his designees each of them be and they hereby are, authorized, empowered, and directed, for and on behalf of this Board, to make awards of the reserve funds to only those LIHEAP subrecipients who exhibit the ability to efficiently utilize the LIHEAP CARES funds prior to their expiration as determined by and at the discretion of the Executive Director or designee, and issue contracts for these funds, only upon confirmation of previous participation review by the Compliance Division and subject to a positive recommendation from EARAC and subject to any EARAC conditions, consistent with the policy noted herein, and to be reported to the Board at the next subsequent Board meeting.

BACKGROUND

President Trump signed the CARES Act into law on March 27, 2020, which provided Texas with approximately \$94 million in LIHEAP CARES funding from USHHS which must be expended by September 30, 2021, for utility assistance for low-income individuals economically impacted by COVID-19.

On April 23, 2020, the Board approved that 9% of the LIHEAP CARES funding be held in a reserve until August 31, 2020, for any future allowable emergency use (e.g., COVID-19 hot spots). If the reserves remained unobligated through August 31, 2020, the funds would be redistributed proportionally to those subrecipients which have expended the CARES Act funds at the highest rate as of August 31, 2020.

Because subrecipients had not reached expenditure levels on their original allocation of CARES Act funding to make such a determination and no specific COVID “hot spots” (for LIHEAP demand) were identified, Department staff believed it was not prudent to commit the LIHEAP CARES reserve funds at that time and therefore requested an extension on the release of the funds to November 30, 2020. The Board approved the request on September 3, 2020. The circumstances at the time of that request continue to be the case and staff cannot yet clearly identify which subrecipients can best utilize the additional LIHEAP reserve funds. Therefore, staff recommends an extension for the commitment of the LIHEAP CARES reserve funds to no later than April 30, 2021.

It is also recommended that the Executive Director have the authority to make award of these funds by April 30, 2021, if used only for additional funds for previously awarded contract uses. These awards would be distributed to only subrecipients which exhibit an ability to efficiently utilize the funds prior to their expiration on September 30, 2021, with a positive recommendation from EARAC and subject to any EARAC conditions.

Approving this action will provide flexibility for the Department by allowing additional time to decide which subrecipients are best able to efficiently expend these funds to assist COVID-affected Texans.

The award of the additional LIHEAP funds when made will be executed as amendments to the existing CARES contracts. For LIHEAP this allows that the previous participation review will be limited to ensuring no federal debarment exists, no outstanding balances exist, and that single audit filing requirements are current.

1f

BOARD ACTION REQUEST

LEGAL DIVISION

JANUARY 14, 2021

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Emerald Run Apartments (HTC 70079 / CMTS 2320)

RECOMMENDED ACTION

WHEREAS, Emerald Run Apartments, owned by Community Enrichment Center, Inc. (Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on December 11, 2020, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$4,000, to be fully forgiven if all violations are resolved as specified in the Agreed Final Order within 30 days of approval by the governing board of TDHCA;

WHEREAS, there are unresolved compliance findings of failure to provide an Annual Eligibility Certification for units 224 and 227, and two new household income violations that are within the corrective action period; 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 an administrative penalty of \$4,000, subject to forgiveness as outlined above, for noncompliance at Emerald Run Apartments, substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Community Enrichment Center, Inc. (Owner) is the owner of Emerald Run Apartments (Property), a low income apartment complex composed of 108 units, located in Tarrant County. Records of the Texas Secretary of State list the following members and/or officers: Steve Bobb (Director), Melva Evans (Director), Christine Mazurek (Director), Jim Makens (Director), Paul Campbell (Director), Randy Moresi (Director), Joan Parma (Director), Carole Phillips (Director), Ray Pinson (Director), Lance Shipp (Director), Pam Willingham (Director), Larry Autrey (Director), Linda Haley (Director), Ray Oujesky (Director), Howard Shaw (Director), Charles Randall Clinton (President), Ronnie C Parish (Vice President), and Kathleen A Duncan (Secretary). CMTS lists Bryan Downer as the primary contact for Owner, and Brent Weast as the property manager. An informal conference on December 11, 2020, was attended by Bryan Downer as Vice President of Property, Brent Weast as property manager, and Tim Allen as Chief Executive Officer. The property is self-managed.

The Property is subject to a Land Use Restriction Agreement (LURA) signed by a prior owner in 1991 in consideration for a housing tax credit allocation in the annual amount of \$49,599 to acquire, rehabilitate and operate the Property. The Owner acquired the property in 2010, and the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land. An Agreement to Comply was also signed by Owner in 2011.

Owner was previously referred for an administrative penalty in 2013 for one household income violation, but that referral was closed informally when a new household occupied the unit upon lease expiration of the noncompliant household.

The following new compliance violations were identified during a 2020 file monitoring review. They were referred for an administrative penalty and were resolved after intervention by the Enforcement Committee:

1. Lease violation for failure to implement the current Tenant Rights and Resources Guide in the leasing office;
2. Lease violation for failure to maintain Tenant Rights and Resources Guide Acknowledgements in tenant files for units 120, 128, 236, and 243.
3. Lease violation for failure to execute required lease provisions for units 120, 128, 207, 236, and 243;
4. Violations relating to household income upon initial occupancy for units 120, 128, 236, and 243;
5. Violations for not collecting Annual Eligibility Certifications for units 107, 109, 113, 142, 144, 148, 202, 203, 209, 210, 212, 213, 216, 219, 220, 221, 223, 225, 226, 228, 232, 235, 238, 239, 240, and 244

The following new compliance violations were identified during a 2020 file monitoring review. They were referred for an administrative penalty and remain unresolved:

1. Violations for not collecting Annual Eligibility Certifications for units 224 and 227. Owner reports that units are currently vacant.

The following additional new compliance violations were identified when TDHCA staff reviewed corrective documentation submitted in response to the administrative penalty referral for the above violations. These additional findings are within a new ninety-day corrective action period set by the Compliance Division, and have not been referred for an administrative penalty. These findings are not part of the proposed Agreed Final Order, but are noted here to avoid future confusion:

1. Household income above income limit upon initial occupancy / program unit not leased to low-income household for units 226 and 235.

Owner participated in an informal conference with the Enforcement Committee on December 11, 2020. The informal conference highlighted problems with staff turnover in December 2019, along with the current property manager's lack of program knowledge and need for training regarding how to income qualify households and compile an acceptable tenant file. Committee members recommended that management staff attend First Thursday Income Eligibility Training and HTC Compliance Training, but this is not a requirement because no courses are being held in the interim period. While many TDHCA training courses have been recorded and are available online, TDHCA has not yet finalized its 2021 training schedule and live online courses are pending scheduling for 2021. Owner agreed to sign an Agreed Final Order with the following terms:

1. A \$4,000 administrative penalty, subject to forgiveness as indicated below;
2. Owner must address all file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before February 15, 2021;
3. If Owner complies with all requirements and addresses all violations as required, the administrative penalty in the amount of \$4,000 will be forgiven; and
4. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, fully forgivable administrative penalty in the amount of \$4,000 is recommended. The recommended amount does not include a penalty for any findings that were dropped by the Compliance Division. This Agreed Final Order 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
COMMUNITY ENRICHMENT CENTER, INC.	§	TEXAS DEPARTMENT OF
	§	HOUSING AND COMMUNITY
WITH RESPECT TO	§	AFFAIRS
EMERALD RUN APARTMENTS	§	
(HTC FILE # 70079 / CMTS # 2320)	§	

AGREED FINAL ORDER

General Remarks and official action taken:

On this 14th day of January 2021, 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 **COMMUNITY ENRICHMENT CENTER, INC.**, a Texas nonprofit corporation (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 1990, Ronald C. Yanke (Prior Owner) was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$49,599 to acquire,

rehabilitate, and operate Emerald Run Apartments (Property) (HTC file No. 70079 / CMTS No. 2320 / LDLD No. 430).

2. Prior Owner signed a land use restriction agreement (LURA) regarding the Property. The LURA was effective November 21, 1991, and filed of record at Volume 10451, Page 1063 of the Official Public Records of Real Property of Tarrant 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 2010 and signed an agreement with TDHCA to assume the duties imposed by the LURA and to comply fully with the terms thereof (Agreement to Assume and Comply), effective September 7, 2011, further binding Respondent to the terms of the LURA.
4. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. A desk file monitoring review was conducted on June 1, 2020, 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 a September 28, 2020, corrective action deadline was set, however, the following violations were not resolved before the corrective action deadline:
 - a. Respondent failed to post a laminated copy of the current Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The version provided to TDHCA for the monitoring review was published January 8, 2015, but the current form version was published in 2017. This violation was corrected in November of 2020, after intervention by the Enforcement Committee.
 - b. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 120, 236, and 243, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. Violations were corrected

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.

between November and December of 2020, after intervention by the Enforcement Committee.

- c. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 207 and 236, 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. Violations were corrected in November and December of 2020, after intervention by the Enforcement Committee.
 - d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for unit 236, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program. The violation for unit 236 was corrected in November of 2020, after intervention by the Enforcement Committee.
 - e. Respondent failed to provide an Annual Eligibility Certifications for units 107, 109, 113, 142, 144, 148, 202, 203, 209, 210, 212, 213, 216, 219, 220, 221, 223, 224, 225, 226, 227, 228, 232, 235, 238, 239, 240, and 244, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household. Twenty six of the violations were corrected between October and November of 2020, after intervention by the Enforcement Committee. The violations for units 224 and 227 remain uncorrected.
6. The following violations remain outstanding at the time of this order:
- a. Annual Eligibility Certification violations described in FOF #5e.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC Chapter2.
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 leasing requirements in 10 TAC §10.613 by failing to post a current laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.

5. Respondent violated leasing requirements in 10 TAC §10.613 by failing to provide a Tenant Rights and Resources Guide to units 120, 236, and 243, and have the households sign acknowledgment forms.
6. Respondent violated leasing requirements in 10 TAC §10.613 by failing to execute required lease provisions for units 207 and 236.
7. Respondent violated 10 TAC §10.611 and Section 4 of the LURA by failing to provide documentation that household income was within prescribed limits upon initial occupancy for unit 236.
8. Respondent violated 10 TAC §10.612 by failing to collect Annual Eligibility Certifications.
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 \$4,000 is an appropriate penalty in accordance with 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 is assessed an administrative penalty in the amount of \$4,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in the exhibits and submit full documentation of the corrections to TDHCA on or before February 15, 2021.

IT IS FURTHER ORDERED that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the assessed administrative penalty and the full amount of the administrative penalty will be deferred and forgiven.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty in the amount of \$4,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 3, 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 January 14, 2021.

By: _____

Name: Leo Vasquez

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 _____ §

Before me, the undersigned notary public, on this 14th day of January, 2021, personally appeared Leo Vasquez, 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 14th day of January, 2021, 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

STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, _____ (*notary name*), a notary public in and for the State of _____, on this day personally appeared _____ (*person signing document*), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is _____, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of _____ for Respondent. I am an authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

COMMUNITY ENRICHMENT CENTER, INC., Texas nonprofit corporation

By: _____

Name: _____

Title: _____

Given under my hand and seal of office this _____ day of _____, 2021.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Exhibit 1

File Monitoring Violation Resources and Instructions

Resources:

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>
Training Presentations: <https://www.tdhca.state.tx.us/pmcomp/presentations.htm>
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
 - i. Do not backdate any documents listed below.
 - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

Instructions:

6. **Annual Eligibility Certification violations for units 224 and 227: Respondent has represented that these units are now vacant.** To correct, Respondent must follow the applicable instruction below and submit required documentation by 2/15/2021:

Circumstance with respect to units listed above	Instruction
I. Unit 224 only	Respondent states that the Wood household in unit 224 intended to move out rather than cooperate. If the household changes their mind, submit a signed Annual Eligibility Certification. If they refuse to cooperate, follow the instructions in the applicable row of this table.
II. If unit is occupied by a new qualified household	Submit the full tenant file*.
III. If unit is occupied by a nonqualified or non-cooperating household on a month-to-month lease	A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.** B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after 2/15/2021 is acceptable provided that Requirement A above is fulfilled by that deadline.

<p>IV. If unit is occupied by a nonqualified or non-cooperating household with a non-expired lease</p>	<p>A. Issue a nonrenewal notice** to tenant and provide a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. If the tenant is protected by another program such as Section 8 or USDA-RD and the property cannot issue a nonrenewal notice as a result, submit a letter stating which program protects the household and committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available;</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt of the full tenant file after 2/15/2021 is acceptable provided that Requirement A above is fulfilled by that deadline.</p>
<p>V. If unit has been vacant <i>more than 30</i> days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/15/2021 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>VI. If unit has been vacant <i>less than 30</i> days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and submit the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after 2/15/2021 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>

**A full tenant file must include:*

- A. Tenant application;*
- B. Verifications of all sources of income and assets;*
- C. Tenant income certification;*
- D. Lease and lease addendum;*
- E. Tenant Rights and Resources Guide Acknowledgment; and*
- F. A copy of the tenant selection criteria under which the household was screened.*

Remember that items A-C above must be dated within 120 days of one another.

*** If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.802(g)*

Exhibit 2

Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as basic technical support. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for Income Determination Training in order to get a full overview of the process. A recorded version of that course is available at <https://www.tdhca.state.tx.us/pmcomp/presentations.htm>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. A suggested tenant file checklist is available at this link: <https://www.tdhca.state.tx.us/pmcdocs/Suggested-File-Checklist.docx>.

**Important Note* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.*

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose on our website. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
 - a. **Income Verification for Households with Section 8 Certificates (HTC only):** If you use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. Since the necessary income and asset verifications were performed by the housing authority and were effective as of a specific date, this form must be signed within 120 days of that effective date, either at initial move-in or at recertification. This form must also be dated within 120 days of the application and Income Certification that you collect. If outside of that period, you must verify income and assets yourself.
 - b. **First hand verifications (required for HOME, NHTF, NSP, and TCAP RF):** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan (at least two months’ worth of check stubs for HOME, NHTF, NSP, and TCAP RF);
 - c. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
 - e. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
 - f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
 - a. **Under \$5000 Asset Certification Form (HTC only):** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
 - b. **First hand verifications (required for HOME)** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan (at least six months' worth of bank statements for HOME).
 - c. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.

6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. [10 TAC §10.613\(a\)](#) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Written Policies and Procedures / Tenant Selection Criteria:** You must maintain written a copy of the written policies under which an applicant was screened in the household's file. Written policies and procedures requirements are at [10 TAC §10.802](#).
8. **Tenant Rights and Resources Guide:** In accordance with 10 TAC §10.613(l), you must customize the Guide for your property and post a laminated copy in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The guide includes:
 - a. Information about Fair Housing and tenant choice; and
 - b. Information regarding common amenities, unit amenities, and services.

Additionally, a representative of each household must receive a copy of the guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date. A copy of the signed acknowledgment must be maintained in the tenant file.

Exhibit 3:

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

2a

TDHCA Outreach Activities, December-January

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
Online Training	ESG CARES and HUD Notice 20-08	Dec. 17	N/A	HOME and Homelessness

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Amy Young Barrier Removal Program

- Posted Phase 3 Funding Stage information

Asset Management

- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (#03006, Villas of Park Grove)
- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement (#15247, City Square Apartment Homes)
- Posted updated Board Calendar for Amendments

Communications:

- Posted Press page article, TDHCA multifamily program spurs Texas economy in 2020
- Posted Press page article, TDHCA's statewide network of partners deliver assistance to those in need

Community Affairs

- Posted updated US Citizenship/US National and SAVE Frequently Asked Questions (FAQs; revised December 2020)
- Posted updated Community Assessment Tool Instructions (CEAP guidance)
- Posted updated Subrecipient Guidance during COVID-19 pandemic FAQs (as of December 17)
- Posted 2021 CSBG-D Migrant Seasonal Farm Worker and Native American-Attachments A-G Application and 2021 CSBG-D NOFA Migrant Seasonal Farm Worker and Native American -Attachment H CSBG Budget spreadsheets
- Posted CSBG Requirements Webinar and slides to Training Video Library
- Posted CSBG TDHCA Sample Strategic Plan spreadsheet
- Posted CSBG Community Needs Assessment (CNA) State Requirement Checklist, Sample CNA Guide, CNAs in a Virtual World
- Posted updated COVID-19-related Sample Questions (as of December 2)

Community Development Block Grant CARES

- Posted TERAP Application Workshop recording, slides and Q&A (as of December 2)

Compliance

- Posted updated Compliance Guidance related to COVID-19 (as of December 2020)
- Posted updated Project Income and Rent Tool (as of July 1)
- Posted updated TAC Title 10 Chapter 1, Subchapter C, Previous Participation

HOME and Homeless:

- Posted updated ESG Annual Allocation Supplemental Monthly Report and Monthly Reporting Guide; updated ESG CARES Supplemental Monthly Report and Monthly Reporting Guide
- Posted updated Single Family Setup and Draw Workbook
- Posted updated Waiver List for the COVID-19 TBRA Set Aside (as of December 15)
- Posted updated Waiver List for HOME TBRA General and PWD Set Asides (as of December 15)
- Posted Spanish-language content to Overview Page - HOME Program

Housing Resource Center

- Posted updated HHSCC member list
- Posted 2020 State of Texas Consolidated Plan Annual Performance Report (CAPER): Reporting on Program Year 2019

Migrant Labor Housing Facilities

- Posted update list of licensed migrant housing facilities (as of December 9)

Multifamily:

- Posted updated HTC Property Inventory list (as of December 10)
- Posted 2021 Multifamily Direct Rule (10 TAC Chapter 13)
- Posted Bond Pre-App Submission Procedures Manual 2021, Bond Pre-application Supplemental 2021
- Moved Bond Pre-App Submission Procedures Manual 2020 (PDF) and Bond Pre-application Supplement 2020 to archive page
- Posted new applications under 2020 and 2021 4% Individually Imaged Bond Applications
- Posted Multifamily Application Procedures Manual, Neighborhood Risk Factors Report, DRAFT 2021 Initial Ceiling Summary (under 2021 Multifamily Uniform Application Supporting Information)
- Posted Concerted Revitalization Plan Application Packet
- Posted updated 2020 4% HTC Bond Status Log (as of December 10)
- Posted Uniform Application Templates 2021
- Posted updated 2020-1 Direct Loan NOFA Application Log (as of December 4)
- Posted 2021 Multifamily Housing Revenue Bond Rules
- Posted Competitive HTC Pre-application Template, Competitive HTC Pre-application Submission System Instructions (under 2021 Pre-Applications Materials)
- Posted updated Previous Participation Form
- Posted 2021 Governor Approved Qualified Allocation Plan (10 TAC Chapter 11) – As received (PDF)
- Posted 2021 Governor Approved Qualified Allocation Plan (10 TAC Chapter 11) – As received (PDF) (tracked changes)
- Posted updated Site Demographic Characteristics Report 2021 as of November 5, 2020, Board meeting (as of December 1)

NOFA

- Posted 2021-1 Multifamily Direct Loan Annual Notice of Funding Availability
- Posted Statewide Allocation Amy Young Barrier Removal Program
- Posted 2021 Amy Young Barrier Removal Program
- Posted FY 2021 CSBG Discretionary NOFA for Education and Employment Initiatives for Migrant Seasonal Farm Worker and Native American Populations

Program Services

- Posted HUD press release regarding Revised SECTION 3 Rule

Public Comment

- Public comment period open for 10 TAC Chapter 1, Section 1.15, Integrated Housing Rule
- Public comment period open for 10 TAC Chapter 2, Enforcement, Subchapter B, Section 2.201, Cost Reimbursement and Section 2.202, Sanctions and Contract Closeout
- Public comment period open for CDBG-CV Second Substantial Amendment to the State of Texas 2019 One-Year Action Plan
- Public comment period open for Draft 2021 State of Texas Low Income Housing Plan and Annual Report (SLIHP)

Purchasing

- Updated list of No-Bid contracts as required by state

Real Estate Analysis

- Posted 2021 Market Analysis Summary Exhibit (XLS)
- Posted updated List of Approved Market Analysts (as of December 9)

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
EHF	Ending Homelessness Fund	QCP	Quantifiable Community Participation
FAQ	Frequently Asked Questions	REA	Real Estate Analysis
HBA	Homebuyer Assistance Program	RFA	Request for Applications
HHSCC	Housing and Health Services Coordination Council	RFO	Request for Offer
HHSP	Homeless Housing and Services Program	RFP	Request for Proposals
HRA	Homeowner Rehabilitation Assistance Program	RFQ	Request for Qualifications
HRC	Housing Resource Center	ROFR	Right of First Refusal
HTC	Housing Tax Credit	SLIHP	State of Texas Low Income Housing Plan
HTF	Housing Trust Fund	TA	Technical Assistance
HUD	U.S. Department of Housing and	TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act

IFB Urban Development
Invitation for Bid

WAP Weatherization Assistance Program

2b



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Update on TDHCA Programs Addressing COVID-19 Pandemic Response
As of January 6, 2021

This report provides an update on the programs TDHCA has targeted to assist with Texas' response to COVID-19 through reprogramming of existing funds, and through the administration of CARES Act and Coronavirus Relief Bill funds.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)	Other Notes
HOME Program Tenant Based Rental Assistance (TBRA) for COVID-19 DR	NA: Reservation Agreements	3-6 months of rental assistance made available through existing or new HOME subrecipients. Geography: Available where subrecipients apply. Income Eligibility: Households at or below 80% AMFI based on current circumstances.	All necessary waivers for this activity were authorized by the OOG and HUD via HUD's mega-waiver of April 10, 2020. The HUD waivers were extended by HUD in December 2020 to expire September 30, 2021.	23 contracted administrators representing 120 counties. Recently notified by HUD that arrears is also allowable, administrators were notified, and we are now getting a handful of arrears requests.	No added TDHCA staffing. No added admin funds.	1,182* Includes active, pending PCR, and closed activities	Up to \$11,290,076 \$4,254,645* 37.68% \$2,031,301 47.74%	1,706 (households) activities submitted. Includes total served. * Amount Reserved
Reprogram 2019 and 2020 CSBG Discretionary and Admin. Funds	<ul style="list-style-type: none"> Board approval March 2020. Recipients contracts effective: 3/26/20 Expenditure Deadline: 8/31/20 	Uses the existing network of Community Action Agencies to provide direct client assistance to low income households economically impacted by COVID-19. Geography: Available statewide (excluding CWCCP and CSI ¹) Income Eligibility: 200% poverty (normally is 125%)	None	Program completed 8/31/20. Final close out reports from 2 subrecipients are still outstanding.	No added TDHCA staffing. No added admin funds.	9,381 persons	\$1,477,993 1,477,993 100% \$1,430,527 97%	38 CAA subs

¹ CWCCP and CSI were omitted from this specific type of award because they have outstanding balances owed to the Department. The counties these two entities cover include: Anderson, Cameron, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, Van Zandt, and Willacy. It should be noted those counties will receive CSBG services under the CSBG CARES funds.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
Recaptured 2018/2019 HHSP	<ul style="list-style-type: none"> Board approval March 2020. Spend by 8/31/20 for 2018 HHSP funds, and extensions on some 2019 HHSP funds through 12/31/20. 	<p>To allow subrecipients to perform HHSP eligible activities in addressing homelessness and those at risk of homelessness.</p> <p>Geography: Available 9 largest metro areas. Income Eligibility: Generally 30% AMFI if applicable</p>	Approval from Comptroller granted.	<p>9 of the 9 contracts have been executed by subs.</p> <p>100% of \$88,547 in 2018 funds expended, and 63% of 2019 HHSP funds expended.</p>	<p>No added TDHCA staffing.</p> <p>No added admin funds.</p>	462 persons	<p>\$239,884</p> <p>\$239,884 100%</p> <p>\$187,580 78%</p>	9 subs
CSBG CARES	<ul style="list-style-type: none"> Board approved April 2020. On 9/3/20 Board programmed 7% in reserve for eviction diversion pilot. Expend 90% by 8/31/22* 45 day closeout 	<p>90% to CAAs using regular formula for households affected by COVID-19; 2% (\$949,120) to Texas Homeless Network²; 7% for an eviction diversion pilot program; and 1% for state admin.</p> <p>Geography: Available statewide Income Eligibility: 200% of poverty (normally is 125%)</p>	The flexibilities allowed by USHHS have been accepted. 40 out of 40 contracts have been executed. THN and 8 Eviction Diversion contracts have been executed.	The CSBG CARES Plan was submitted on 9/18/20.	<p>1 Art. IX FTE for CSBG reporting</p> <p>1% admin (\$474,560)</p>	46,436 persons	<p>\$48,102,282</p> <p>\$48,102,282 100%</p> <p>\$19,520,166 41%</p>	<p>40 CAA subs</p> <p>* CSBG-CV Discretionary has various deadlines.</p>
LIHEAP CARES	<ul style="list-style-type: none"> Board approved April 2020 By 4/30/21 need to decide on the 9% reserve Expend by 8/30/21 45 day closeout 	<p>90% to CEAP subs using regular formula for households affected by COVID-19; 9% to be held in reserve for future emergency use or for subs; and 1% for state admin.</p> <p>Geography: Available statewide Income Eligibility: 150% of poverty</p>	The flexibilities allowed by USHHS have been accepted. Told HHS no WAP w/ CARES. Sent waiver request 5/13/20 to HHS about performance measures for billing history. As of 1/6/21, no response. No 10% Carry Forward applies.	37 out of 37 contracts have been executed.	<p>1 Art. IX FTE for CEAP TA/capacity (Filled)</p> <p>1% admin (\$892,670)</p>	40,566 persons	<p>\$94,023,896</p> <p>\$85,561,744 91%</p> <p>\$15,634,838 18%</p>	37 subs. No subs declined funds.

² The award to THN is to address homelessness and those at risk of homelessness as a result of COVID-19.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
CDBG CARES – Phases I, II and III	<p>Board approved general use of the funds for CDBG Phase I in April 2020 and Plan Amendment in October 2020. A second Plan Amendment is being presented to the Board in January 2021.</p> <p>80% of funds must be expended within 3 years of the grant agreement date; remaining 20% by 6 years from the grant agreement date.</p> <p>90-day closeout</p>	<p>Recommended Usage - Second Plan Amendment (pending Board approval on January 14, 2021): in entitlement communities rental assistance including an eviction diversion program, and mortgage payment assistance statewide. Other activities noted in "Other Notes"</p> <p>Geography: \$37.4 million for rental assistance in entitlement areas. \$40,000,886 to be allocated in non-entitlement areas for mortgage assistance. \$28.5 million in mortgage assistance funds also to be regionally allocated to cover the state.</p> <p>Income Eligibility: For households at or below 80% of AMI for rental assistance.</p>	<p>Office of the Governor designated TDHCA as the state agency recipient for all CDBG CARES on June 15, 2020.</p> <p>Plan Amendment reflecting use of these funds was approved by HUD on October 27, 2020 and grant agreements have been executed. A second Plan Amendment is presented to the Board in January 2021. May need to seek a waiver relating to the program funds being allowed to pay a household's mortgage arrears, including taxes and insurance.</p>	<p>Applications for rental assistance from entitlement communities were due 12/28/20. Contracts expected to start 1/15/21. Other program roll-out efforts pending second plan amendment approval from HUD.</p>	<p>CDBG Director position filled. 6 positions filled.</p> <p>All FTES are Art. IX</p> <p>Up to 7% admin and TA budget (\$9,929,238)</p>	0	<p>1st allocation: \$40,000,886 2nd Allocation: \$63,546,200 3rd Allocation: \$38,299,172</p> <p>Total: \$141,846,258</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>Other Activities (pending Board approval on January 14, 2021): FEMA match for food distribution activities, broadband planning, legal services, assistance for providers of persons with disability, and possible HMIS data warehouse funds.</p>
ESG CARES – Phase I	<ul style="list-style-type: none"> Board approved programming plan on April 2020, and conditional awards on July 23, 2020. Expend by 9/30/22 90 day closeout 	<p>Four streams:</p> <ul style="list-style-type: none"> Existing subs were offered 100% to 200% of current contract amount (~\$12.5M) ESG Coordinators decided via local process for their CoC, and awards made in three areas without ESG Coordinators by offering funds to CoC awardees (~\$17.2M) Legal/HMIS (\$1.9M) <p>Geography: Locations of all funded grantees Income Eligibility: 50% AMI for homeless prevention.</p>	<ul style="list-style-type: none"> HUD mega-waivers accepted. An updated waiver request to HUD was submitted on August 31, 2020. One-Year Plan/ Con Plan amendment to HUD on May 8. Signed HUD grant agreement sent to HUD 5/15/20. Funds live in HUD system 5/22/20. 	<ul style="list-style-type: none"> 49 contracts signed for existing ESG subs 41 out of 43 contracts generated for new ESG subs 3 legal service providers awarded. 	<p>3 Art. IX FTE (for all phases of ESG as well)</p> <p>5% admin (\$1,662,734)</p>	11,225 persons	<p>\$33,254,679</p> <p>30,899,003 93%</p> <p>\$3,919,291.86 12%</p>	<p>This is the first \$1B of national ESG.</p> <p>HMIS/Coordination funds totaling \$365,826 will go to the 8 ESG Coordinators.</p>

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
ESG CARES – Phase II	Federal award amounts announced 6/9/2020.	Two streams: <ul style="list-style-type: none"> • \$61,031,041 for Homelessness Prevention and Rapid Rehousing. • \$274,649 for ESG CARES and HMIS Coordination through each Continuum of Care. 	ESG Guidance issued by HUD on 9/1/20. Plan Amendment submitted to HUD 10/21/20. HUD signed grant agreement on 10/27/2020.	Awards being recommended at the January 2021 Board meeting.	FTEs noted under ESG CARES Phase I will be utilized for both phases. 5% admin (\$3,232,337)	0	\$64,537,937 \$0 0% \$0 0%	This is the state's share of the second (final) allocation of \$2.96 billion.
Housing Choice Voucher Program Admin	HUD has clarified that expenditure must occur by 6/30/20 (this is an update from a previous noted deadline of 12/31/20). (PIH 2020-08) 1 st Award: \$117,268 2 nd Award: \$140,871 (8/10/2020)	<ul style="list-style-type: none"> • Software upgrades with Housing Pro to allow more efficient remote interface. • Landlord incentive payments. • Possible damage assistance, PPE expenses, tablets • October 2020 Board approved use of funds for retention payments to existing owners to ensure their ongoing participation in the program. 	Received HUD interpretation that using funds for software upgrades are acceptable. \$11,260 obligated for the system purchase. \$58,000 offered to 60 households for landlord incentives. \$12,500 offered to 30 households for landlord retention payments.	Purchases of Housing Pro upgrades complete. Training underway. Materials for landlord incentives completed.	No added TDHCA staffing.	0	\$258,139 \$38,012 32.4% \$0 0%	\$380M nationally
Housing Choice Voucher Program MVP	12 months of assistance, start date begins whenever we designate with HUD. Orig. Alloc: \$105,034 Supp. Alloc.: \$5,268	15 additional MVP vouchers consistent with our award of MVP, which for us is for the Project Access List. A quarterly supplemental allocation from HUD in the amount of \$5,268 was received on 8/10/2020 to support the 15 vouchers.	None needed.	Received award from HUD. Issued the 15 vouchers on 5/22/20. Some households still looking for units and time has been extended for them.	No added TDHCA staffing. No added admin funds.	3 families leased	\$110,302 \$0 0% \$0 0%	\$1,275 obligated to Mainstream families. There are 12 households searching for units

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
Coronavirus Relief Bill Rental Assistance (CRBRA)	<p>Signed by the President on December 27, 2020, the bill, tied to the appropriation bill, dedicated funds through Treasury specifically for rental assistance.</p> <p>Need Treasury guidance.</p> <p>Must obligate funds by 9/30/21</p> <p>Must expend funds by 12/31/21</p>	<p>Program provides up to 15 months of rental and utility assistance including arrears. Households must reapply every 3 months. Anticipated to be run by the state directly with no subrecipients. 10% of funds may be used for Housing Stability services.</p> <p>Geography: Available statewide.</p> <p>Income Eligibility: For households at or below 80% of AMI.</p>	Not yet known.	<p>The state of Texas is estimated to receive \$1,940,538,000 in total; at least 55% is to be administered by the state - \$1,067,295,900 . If the remaining funds are not accessed by local governments with population above 200,000, the state's share may be increased.</p>	<p>Temporary positions will need to be filled.</p> <p>All FTES are Art. IX</p> <p>Up to 10% admin budget (\$194,053,800)</p>	0	<p>\$1,067,295,900</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>As of the date of this posting, TDHCA has not yet been designated by the Governor as the administering agency of these funds.</p>

Note that Section 811 was initially reflected on this report. However, the funds in CARES have been clarified by HUD to be for traditional 811 Project Rental Assistance Contracts, not 811 PRA programs.

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BOARD REPORT ITEM

BOND FINANCE DIVISION

JANUARY 14, 2021

Report on the Department's Swap Portfolio and recent activities with respect thereto

BACKGROUND

Between 2004 and 2007, the Department entered into five interest rate swaps to hedge interest rate risk associated with its tax-exempt, single family variable rate mortgage revenue bonds. One swap was terminated in conjunction with a refunding of the underlying bonds, and four swaps remain outstanding, two of which were restructured in 2014.

In accordance with the Department's Interest Rate Swap Policy, the Bond Finance Division has the day-to-day responsibility of managing the swaps. The outstanding bonds associated with each of the swaps are reduced by scheduled redemptions and maturing amounts, and by amounts representing principal and prepayments received on the mortgage-backed securities that secure each bond issue. Under state law, the notional amount of swap outstanding cannot exceed the par amount of related bonds outstanding. To avoid being overswapped, staff closely monitors the amount of swap outstanding, the related outstanding bond amount, and any upcoming bond redemptions to ensure enough swap is called to comply with state law.

In addition to monitoring state law compliance, staff works closely with the Department's Financial Advisor, Stifel, Nicolaus & Company, Incorporated, to identify opportunities to terminate or reduce swaps by exercising optional terminations, or call rights, on the swaps. Staff analyzes the economic benefit of the proposed termination, and evaluates potential interest rate or other associated risks. When both economically beneficial and prudent to do so, optional termination rights are exercised on portions of the underlying swaps.

The attached report reflects the status of the Department's swaps as of December 1, 2020. Series 2005A and Series 2007A swaps are matched amortization swaps; as such, a reduction in the outstanding swap amount for these series is the direct result of principal payments and prepayments received on the underlying mortgage loans. The reduction of \$560,000 in the outstanding swap for Series 2004B and \$445,000 for Series 2004D was due to principal and prepayments received on the underlying mortgage loans. State law requires that the bonds outstanding equal or exceed the amount of swap outstanding at all times.

Since 2004, when the Department first utilized swaps to hedge variable rate bonds, the total notional amount of swaps has been reduced from an initial \$354,005,000, to the current outstanding amount of \$53,620,000.

Texas Department of Housing and Community Affairs
Swap Portfolio Update
January 14, 2021

Matched Amortization Swaps							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Swap Outstanding Notional as of 6/1/2020	Swap Outstanding Notional as of 12/1/2020	CHANGE in Swap Outstanding
2005A	JP Morgan	8/1/2005	9/1/2036	\$ 100,000,000	\$ 16,285,000	\$ 15,065,000	\$ (1,220,000)
2007A	JP Morgan	6/5/2007	9/1/2038	\$ 143,005,000	\$ 15,835,000	\$ 13,780,000	\$ (2,055,000)

Amortizing Swaps with Optionality							
Related Bonds	Swap Counterparty	Effective/Restructured Date	Maturity Date	Original Notional Amount	Swap Outstanding Notional as of 6/1/2020	Swap Outstanding Notional as of 12/1/2020	CHANGE in Swap Outstanding
2004B	BNY Mellon	3/1/2014	9/1/2034	\$ 40,000,000	\$ 14,895,000	\$ 14,335,000	\$ (560,000)
2004D	Goldman Sachs	1/1/2005	3/1/2035	\$ 35,000,000	\$ 10,885,000	\$ 10,440,000	\$ (445,000)
2006H	BNY Mellon	3/1/2014	9/1/2025	\$ 36,000,000	\$ -	\$ -	\$ -

TOTAL SWAPS				\$ 354,005,000	\$ 57,900,000	\$ 53,620,000	\$ (4,280,000)
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2004B - UBS AG was the original counterparty and the original notional at issuance was \$53,000,000.

Variable Rate Bonds Associated with Matched Amortization Swaps							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Bonds Outstanding 6/1/2020	Bonds Outstanding 12/1/2020	CHANGE in Bonds Outstanding
2005A	JP Morgan	8/1/2005	9/1/2036	\$ 100,000,000	\$ 16,285,000	\$ 15,065,000	\$ (1,220,000)
2007A	JP Morgan	6/5/2007	9/1/2038	\$ 143,005,000	\$ 15,835,000	\$ 13,780,000	\$ (2,055,000)

Variable Rate Bonds Associated with Amortizing Swaps with Optionality							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Bonds Outstanding 6/1/2020	Bonds Outstanding 12/1/2020	CHANGE in Bonds Outstanding
2004B	BNY Mellon	3/1/2014	9/1/2034	\$ 40,000,000	\$ 16,655,000	\$ 15,595,000	\$ (1,060,000)
2004D	Goldman Sachs	1/1/2005	3/1/2035	\$ 35,000,000	\$ 11,645,000	\$ 11,065,000	\$ (580,000)
2006H	BNY Mellon	3/1/2014	9/1/2025	\$ 36,000,000	\$ -	\$ -	\$ -

TOTAL BONDS				\$ 354,005,000	\$ 60,420,000	\$ 55,505,000	\$ (4,915,000)
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BOARD ACTION REQUEST

SECTION 811 DIVISION

JANUARY 14, 2021

Presentation, discussion, and possible action on an order proposing the amendment of 10 TAC §8.7 Program Regulations and Requirements, and directing publication for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Department currently administers two awards from the U.S. Department of Housing and Urban Development (HUD) of Section 811 Project Rental Assistance (811 PRA) Program funds providing rental assistance for approximately 450 households;

WHEREAS, Department staff has recognized the need for revisions to 10 TAC Chapter 8, which governs the 811 PRA Program, specifically to §8.7, relating to Program Regulations and Requirements; and

WHEREAS, such proposed amendment will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to cause the proposed amendment of 10 TAC §8.7, Program Regulations and Requirements, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

BACKGROUND

10 TAC §8.7 relates to the regulations and requirements that govern the 811 PRA Program. This rule amendment will require that properties receive written permission from the Department prior to reinstating a household in the Section 811 PRA Program, in accordance with federal requirements. This is necessary to provide clarity to Owners and to ensure that program funds are not committed when in fact no funds are available for such commitment. This situation arises when an 811 PRA-assisted household, whose assistance was terminated because they no longer met the program's eligibility requirements but was allowed to remain in the unit paying the full rent, once again becomes program eligible.

For example: an eligible household has been receiving 811 assistance. Their income increases above the program's limits. The tenant pays the unassisted rent required for the Unit. Several months later, the household's income drops again, and they now meet the eligibility requirements of the program. However, the program may no longer have funds available to commit to another household at that time. Additionally, other households would have been waiting for assistance and may need to be assisted first.

Based on this example it can be seen that a property cannot commit to a household that they are able to receive 811 PRA assistance again without first obtaining Department approval. Upon request from the property, the Department will determine if the household can be reinstated.

This amendment protects the integrity of the program in three ways. First, the rule amendment ensures the Department is not encumbering more funds than are available. Second, the rule amendment prevents the property from exceeding the number of units set aside for the Section 811 PRA Program. Third, the rule amendment ensures that no households on the property's Section 811 PRA waiting list are skipped over.

This rule amendment adheres to the program's federal regulations. Termination and reinstatement to the Section 811 PRA Program is informed by HUD Handbook 4350.3, which describes the program's occupancy requirements and procedures. Chapter 8, section 8-1 of the HUD Handbook 4350.3 addresses terminating housing assistance. As established by the requirements and procedures and program lease, termination of assistance occurs when a tenant is no longer eligible for subsidy or to enforce HUD program requirements. Termination results in the loss of subsidy to the tenant. Tenants whose assistance is terminated may remain in the unit, but they must pay the full applicable rent set by the owner. Owners are authorized to terminate assistance only in limited circumstances and after following required procedures to ensure that tenants have received proper notice and an opportunity to respond. Chapter 8, section 8-6 addresses reinstatement, which includes the requirement that assistance is available for the unit. This rule amendment ensures assistance is available for the unit.

Staff recommends approval of the proposed amendment of this rule for publication in the *Texas Register* to solicit public comment.

Attachment 1: Preamble amendment to 10 TAC Chapter 8.7 Program Regulations and Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §8.7, Program Regulations and Requirements, as it relates to properties participating in the Section 811 Program. The purpose of the proposed amendment is to clarify for Owners that the Department must confirm that assistance is available for an eligible household prior to the property owner reinstating that household to the program. The amendment specifies that property owners or agents must request and receive written confirmation from the Department that the household can be reinstated to the Section 811 PRA Program.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because there is no cost to the rule change proposed.

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

Mr. Bobby Wilkinson, Executive Director has determined that for the first five years the amendment would be in effect:

1. The rule amendment does not create or eliminate a government program. This rule amendment merely ensures that program funding is available to support a household prior to reinstatement, and that no other households are skipped over. This rule also harmonizes the Department's policy regarding a property's actions with the federal regulation, HUD Handbook 4350.3.

2. The rule amendment 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 workload to a degree that eliminates any existing employee positions.

3. The rule amendment does not require additional future legislative appropriations.

4. The rule amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule amendment is not creating a new regulation, except that it is amending a rule to ensure reinstated households have funding available to support them and that no other eligible households are skipped over.

6. The rule amendment will expand an existing regulation by adding an additional communication requirement that ensures the program is administered fairly and does not exceed the property's obligation or the program's budget.

7. The rule amendment will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The rule amendment will not negatively or 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 proposed 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 §2306.041 and §2306.0504.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined

in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for owners and managers of developments participating in Department programs. Other than in the case of a small or micro-business that participates in the Department's program covered by this rule, no small or microbusinesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so and the amendment poses no fiscal impact on such businesses.

3. The Department has determined that because all potential penalties can be avoided by adhering to program rules, 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 proposed amendment does not contemplate or 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 proposed rule has no economic effect on local employment. Therefore, no local employment impact statement is required to be prepared for this 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 the rule amendment has no economic impact on local 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. Wilkinson has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the amended section because the process described by the rule does not net an economic cost to the property owner or owner's agent subject to the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments, based on the Department's history and past experience with penalty collections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 1, 2021, through March 3, 2021, to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email at spencer.duran@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 3, 2021.

STATUTORY AUTHORITY. The amended section is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amendment affects no other code, article, or statute.

§8.7 Program Regulations and Requirements

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

- (1) H 2012-06, Enterprise Income Verification (EIV) System;
- (2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;
- (3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;
- (4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;
- (5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or
- (6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

- (1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.
- (2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.
- (3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening.

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily Property's Tenant Selection Criteria, as defined by and in accordance with 10 TAC §10.802 (relating to Written Policies and Procedures), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total

number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in 10 TAC §10.406, (as amended), regarding Ownership Transfer requests.

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to:

(A) Document in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(B) Submit a written request to TDHCA before reinstating a household previously terminated from the Section 811 Program. Within three TDHCA business days of receipt of request, TDHCA will notify the Owner whether or not the household can be reinstated. The household may be reinstated if the following conditions are satisfied:

(i) Funding is available as determined by the Department and in the budget established under the property's Rental Assistance Contract;

(ii) Reinstating the household would not cause the property to exceed the number of assisted Units indicated in Exhibit 1 of the Rental Assistance Contract;

(iii) No eligible households on the property's Section 811 PRA waiting list will be skipped over; and

(iv) The reinstated household will occupy a Unit located in the original Eligible Multifamily Property.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum TDHCA enforced rent restriction at the Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 et seq.);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 et seq.);

(C) National Environmental Policy Act (42 U.S.C. §4321 et seq.) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 et seq.) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 et seq.) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 et seq.);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 et seq.);

(H) Clean Air Act (42 U.S.C.A. §7401 et seq.) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 et seq.) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 et seq.). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act

(40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, et seq.) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at <http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm>.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 et seq.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 et seq.), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, (relating to Protected Health Information), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the

URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

4

BOARD ACTION ITEM
ASSET MANAGEMENT DIVISION
JANUARY 14, 2021

Presentation, discussion, and possible action on timely filed appeal under the Department's Multifamily Program Rules for Villas on Raiford (Exchange #15090009913)

RECOMMENDED ACTION

WHEREAS, the appeal relates to Villas on Raiford (the Development) that received an allocation of 9% tax credits in 2007 and an award of additional credits in 2008 that were converted to an Exchange award in 2009 for the construction of 180 units of elderly housing in Carrollton, Denton County;

WHEREAS, on October 26, 2020, the legal counsel for Villas on Raiford Carrollton Senior Housing, LLC (Development Owner or Owner), submitted a request for the Department to execute a Subordination Agreement and a HUD Amendment to Restrictive Covenants as required in connection with a refinance of the first lien debt with an FHA 223(f) loan;

WHEREAS, on November 10, 2020, a Preliminary Term Sheet was provided that indicates the refinance will include a cash out payment of \$10,624,841;

WHEREAS, staff determined that the Special Reserve must be funded from the cash out proceeds in accordance with Section 8.3 of the Subaward Agreement and 10 TAC §10.404 before the Subordination Agreement can be executed by the Department, and the Owner was advised of this determination on November 20, 2020;

WHEREAS, in a letter dated November 25, 2020, the Owner requested an appeal of staff's determination from the Executive Director;

WHEREAS, the Executive Director issued a letter dated December 9, 2020, to the Owner stating that staff's determination is sustained but that if the Owner was not satisfied with the determination, in accordance with 10 TAC §1.7(f), the Owner had seven days to submit a written appeal to be presented to the Board; and

WHEREAS, on December 16, 2020, the Owner submitted a written request for an appeal to be presented to the Board for consideration;

NOW, therefore, it is hereby

RESOLVED, that the appeal for Villas on Raiford is hereby denied.

BACKGROUND

Villas on Raiford received an allocation of 9% tax credits in 2007 and an award of additional tax credits in 2008 that were subsequently converted to an Exchange award in 2009 for the construction of 180 units of elderly housing in Carrollton, Denton County. The tax credit Exchange program was created after the original tax credit application for the Development was submitted and was intended to save developments that were struggling to secure investors due to the economic crisis at that time. As part of the tax credit Exchange transaction, the Owner and the Department entered into a Subaward Agreement dated September 1, 2010, in the amount of \$10,542,031, and a Recapture Mortgage dated August 31, 2010. Section 8.3 of the Subaward Agreement and Section 3.11(c) of the Recapture Mortgage require the Development Owner, Villas on Raiford Carrollton Senior Housing, LLC, to fund a Special Reserve Account (SRA) intended to assist residents with expenses associated with their tenancy or other purposes as approved by the Department.

The Subaward Agreement for the Development specifies that, in the event that any net cash flow is generated by the Development in any fiscal year during the Compliance Period or the Extended Use Period, 20% of the net cash flow must be deposited to the SRA. Net cash flow is not defined in the Exchange documents, and it should be noted that the SRA requirement was created as part of the Exchange program, and was not part of the original tax credit application for the Development. Due to the emergency need for immediate release of the Exchange funds, specific rules were not developed prior to the drafting of Exchange documents. Subsequently, a section regarding the SRA was added to the rules in 2014, and in 2015, the Department's rules clarified in 10 TAC 10.404(d)(1) that net cash flow includes proceeds from refinancing or other fundraising from a development.

On October 26, 2020, the Department received a request to execute a Subordination Agreement as part of a refinance of the current FHA 221(d)(4) loan with a new FHA 223(f) loan for the Development. The Development's current loan is a HUD insured Note in the original amount of \$9,054,700, with a 4.23% interest rate, with monthly payments of principal and interest of \$39,513, or an annual debt service of \$474,156 that excludes the Mortgage Insurance Premium (MIP), and a 40-year term. According to the 2019 audited financials for the Owner, the note matures on March 1, 2052. Based on the 2019 Annual Owner's Financial Report, the Development generated \$342,411.93 in operating cash flow after an annual debt service payment of \$511,924.74, resulting in a 1.67 Debt Coverage Ratio (DCR). To date, the Owner has complied annually with funding the SRA with 20% of the surplus cash released by HUD. On November 10, 2020, the Development Owner provided a copy of their loan application and a term sheet dated August 18, 2020. The information provided identifies the outstanding balance of the current loan as \$8,668,335, and the proposed new loan amount is \$19,715,200, resulting in a \$10,624,841 net cash payment available to the borrower after all loan costs are considered. The new loan is proposed to have a 2.30% interest rate, and 35-year term. Based on this information, the new annual debt service with the MIP would be \$869,911.04, an increase of \$357,986.30 from the reported 2019 debt service. Based on this information, the Development would not be feasible with the proposed new debt, which would be \$15,574.37 more than the 2019 cash flow identified on the 2019 AOFR. Therefore, to determine if the proposed new debt

would be feasible, staff requested and received a 12-month trailing operating statement. Based on the operating history from November 1, 2019, through October 31, 2020, the Development generated \$1,030,719 in Net Operating Income (NOI), which would result in a 1.18 DCR at the proposed debt service.

Since the term sheet identifies a cash out payment in the amount of \$10,624,841 as part of the refinance, the Owner was advised that the Special Reserve Account must be funded in accordance with 10 TAC §10.404(d)(1), as the cash out is considered part of the net cash flow required under the Subaward Agreement. However, the Owner disputed this requirement, and in a letter dated November 25, 2020, submitted a request to the Executive Director for an appeal of staff's determination. In a letter dated December 9, 2020, the Executive Director notified the Owner that staff's determination that the SRA must be funded from the cash flow from the refinancing was sustained. The Executive Director also advised the Owner that if they were not satisfied with the determination, an appeal could be submitted in writing directly to the Board within seven days from the date of the letter in accordance with 10 TAC §1.7(f). In a letter dated December 16, 2020, the Owner submitted a written request to the Board to appeal the decision of staff and the Executive Director.

The Owner states that 10 TAC §10.404(d) was established in 2014 to address perceived overfunding of tax credits and/or excess cash flow generated by developments at cost certification and that it initially provided for the industry an accepted standard definition of net cash flow as being funds available from operations related to the collection of rents less operating expenses and debt service. However, staff notes that deposits into the Special Reserve Account to address overfunding for Exchange developments at cost certification was also an option but was not necessary for this Development. The Owner asserts that the Development was a 2007 Housing Tax Credit (HTC) Application that received a 2008 forward commitment, and therefore, is not subject to the current definition of net cash flow in 10 TAC §10.404(d). The Owner states that the Subaward Agreement does not define net cash flow, but that Exhibit G to the Agreement prescribes the schedule for calculating net cash flow to only include operating functions, not refinancing or fundraising activities. However, staff notes that Exhibit G was used to report on the quarterly performance of the development and was not to be considered a full accounting of cash flow, which is reflected separately in the required annual audited financial statements. The Owner also states that the 2007 QAP does not define net cash flow but that it is defined in the 2007 Real Estate Analysis Rules as funds available from operations after all expenses and debt service required to be paid has been considered. The Owner also contends that the Subaward Agreement and all other Department documents are subordinate to the HUD's Regulatory Agreement that defines excess cash flow that could be disbursed or transferred into the SRA. However, it should be noted that, while HUD limits the amount of operating cash flow that is released, HUD does not limit the use of excess cash from a refinance.

Additionally, while the QAP and Exchange documents do not define net cash flow, cash flow is an accounting term, as reflected in the statement of cash flow in the audited financial statements for the Development, which includes proceeds from operations, financing activities, and investment activities. For purposes of the Real Estate Analysis Rules, this term refers to cash flow from operations, as cash flow from financing activities is considered separately as part of the evaluation of the sources and uses. In the case of this refinance, after all uses for the

Development are considered, there will be a net cash flow from financing activities in the amount of \$10,624,841, which staff believes should be considered for purposes of the Special Reserve Account and would result in a deposit of \$2,124,968.

Furthermore, staff advised the Owner that while the original rules did not specify that cash from refinancing is part of net cash flow, the proposed refinance will increase the amount of debt service, which is included as part of the operating cash flow definition in §1.31(b)(3) of the 2007 REA Rules. Therefore, the addition of this language to 10 TAC §10.404(d)(1) was not a new requirement, but merely a clarification of the Department's existing position as to the meaning of "funds available from operations after all expenses and debt service required to be paid have been considered." If only cash flow from operating activities is to be considered for purposes of the Special Reserve Account, it should be noted that 20% of the lost operating cash flow as a result of the increased debt service would result in \$2,219,515 not being deposited into the Special Reserve Account over the approximately 31 years left on the term of the LURA, which terminates on December 31, 2051, which is prior to the March 1, 2052, maturity date of the current loan. This amount exceeds 20% of the excess cash proceeds from this refinance. Therefore, since the cash out payment from the refinance affects the debt service, it has an impact on the net cash flow from operations and is subject to the SRA funding requirement. It should also be noted that there have been other Exchange developments that have refinanced with a cash out payment, and the owners have complied with funding the SRA.

Staff recommends the Board deny the appeal.

VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC

December 16, 2020

Chairman Leo Vasquez and Governing Board Members
Texas Department of Housing and Community Affairs
201 East 11th Street
Austin, TX 78701

Re: TDHCA #09913 – Villas on Raiford a 2007/2008 Housing Tax Credit Property
Carrollton, TX

Dear Chairman Vasquez and Honorable Board Members,

In accordance with 10 TAC 1.7(f), please accept this letter and the attached documentation in support of an appeal of Staff's November 20, 2020 determination and the Executive Director's December 9, 2020 determination that the 2020 Department Rule TAC 10 10.404(d) applies to the 2007 Housing Tax Credit Award made by the Department to Villas on Raiford Carrollton Senior Housing, LLC (the "Development Owner") for the new construction of Villas on Raiford (the "Development"), a 180 multifamily property located in Carrollton, TX. The rule is quoted below in its entirety for your convenience:

*"(d) **Special Reserve Account.** If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner. (1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. The account will be structured to require Department concurrence for withdrawals. (2) All disbursements from the account must be approved by the Department. (3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner. (4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request."*

The current rule quoted above was established in 2014 to address perceived over funding of tax credits and/or excessive cashflow generated by Developments at Cost Certification. Initially, the rule provided for the industry accepted standard definition of net cash flow as it being funds available from operations related to the collection of rents less operating expenses and debt service. However, in 2015 the

Department changed the definition for the purpose of calculating Special Reserve Account deposits to include refinancing and fundraising activities, as is currently reflected and highlighted above.

Villas on Raiford was a 2007 Housing Tax Credit Application that received a 2007 Housing Tax Credit Commitment and a 2008 Forward Commitment. After the economic crash in 2008, Villas on Raiford Carrollton Senior Housing, LLC (the "Development Owner") was awarded Tax Credit Exchange Program ("TCEP") funding under Section 1602 of the American Reinvestment and Recovery Act of 2009 in lieu of selling its tax credits to a syndicator. The TCEP award required deposits into a Special Reserve Account established in accordance with the Subaward Agreement ("the Agreement") dated September 1, 2010 between the Department and the Development Owner. The Subaward Agreement plainly states the rules in effect for the Development are the 2007 rules, not 2020 rules as quoted in the excerpt below:

"QAP" means the "**Qualified Allocation Plan and Rules with Amendments**" in effect for the State for the year in which the Tax Credits were awarded to the Development Owner with respect to the Development as published in Title 10 of the Texas Administrative Code.

The Subaward Agreement to make deposits from net cash flow generated by the Development was not related to over funding of tax credits at Cost Certification consistent with the 2020 rule. The Subaward Agreement to make deposits was specifically related to an election to set aside more affordable housing units at 30% or less of the Area Median Family Income ("AMI") than those applied for at initial Application; that election is shown in **Exhibit K** of the Agreement as quoted in Paragraph 8.3 excerpt below:

Section 8.3 Special Reserve Account

In the event that any net cash flow is generated by the Development in any given Fiscal Year during the Compliance Period or the Extended Use Period, then after assuring that the reserves required by Sections 8.1 and 8.2 are fully funded, the participation percentage of such net cash flow shall be placed in a special reserve account to assist residents to provide assistance with expenses associated with their tenancy. Resident expenses that may be paid from such special reserve account include application costs, security deposits or utilities for any unit leased to residents with incomes at or below 50% of the area median family income, or other purposes as approved by the Department. The level of special reserve account participation is outlined in **Exhibit K**. The Department shall have prior approval rights for any disbursement of funds from such account, which approval shall not be unreasonably withheld.

The Agreement does not define net cash flow. However, **Exhibit G** to the Agreement specifically prescribes the schedule for calculating net cash flow and only includes operating functions. It does not include refinancing or fundraising activities in the schedule.

The 2007 QAP does not define net cash flow either. However, the 2007 Real Estate Analysis Rules ("the REA Rules") §1.31 General Provisions (b) Definitions states, "*Many of the terms used in this subchapter are defined in the Department's Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP", as proposed. Those terms that are not defined in the QAP or which may have another meaning when used in subchapter B of this title, shall have the meanings set forth in this subsection unless the context clearly indicates otherwise.*" Cash Flow is defined in the 2007 REA Rules as follows: "*(3) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.*" The REA Rules definition is consistent with **Exhibit G** of the Agreement.

The property was completed and placed in service in 2011, and Cost Certification occurred in 2012. The Department did not note any overfunding or excessive cash flow at the time of Cost Certification. The LURA reflects the final affordability for the property and our special reserve account has been funded in accordance with our Agreement. Of the 180 total units developed, 172 are affordable; but only 18 affordable units qualify for use of the Special Reserve Account proceeds due to the highly prescriptive restrictions placed on use for residents with incomes at or below 50% of the AMI. As of 10/31/2020, the account balance is \$325,176.15. No funds have been withdrawn or requested for use by our 30% AMI residents as they all have housing vouchers and receive other assistance.

Please see the attached email from Karen Treadwell dated 3/5/2020 stating she was “in the process of drafting a **Special Reserve Account Agreement** as required in TAC 10 10.404(d)” for the Development. The Development Owner did not agree or execute that document. Therefore, the existing Subaward Agreement has not been amended or otherwise modified by side agreement.

Villas on Raiford (“the Property”) was 100% financed by Federal funding sources, with the exception of equity required to initially fund certain escrow accounts at closing. The FHA 221d4 first lien precluded the use of loan proceeds to fund reserve accounts. The Subaward Agreement is subordinate to the FHA 221d4 loan, and it also explicitly precluded the use of TCEP proceeds to fund reserve accounts.

Generally, the 2020 rule works against public policy to efficiently use resources to provide affordable housing. Based on the definition, any re-syndication of related transactions would require a deposit of proceeds from the sale of future tax credit awards also be placed in the reserve account.

More specifically, the 2020 rule requires written agreement by the Development Owner and the Department as underlined in the rule above. However, the Department has determined the 2010 Subaward Agreement is a written agreement that complies with the rule. It is impossible for the Development Owner to legally agree to a rule or definition that didn’t exist at the time the Subaward Agreement was executed on September 1, 2010 and the Development Owner did not agree nor execute the Special Reserve Account Agreement circulated by the Department in March of this year.

We respectfully request granting of our appeal and concurrence that the signed agreements between the Department and the Development Owner are based on the Department rules established in 2007 as legally agreed to. Furthermore, the Development Owner is not subject to any of the 2020 Department Rules, including those rules related to the Special Reserve Account.

Please contact me at (972) 567-4630 if you have any questions or concerns.

Respectfully submitted,

VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC, a Texas limited liability corporation



By: Villas on Raiford, LLC, its manager

By: AD Villarai, LLC, its sole manager

By: Terri L. Anderson, its sole member and manager

terri_l_anderson@msn.com

From: Karen Treadwell <karen.treadwell@tdhca.state.tx.us>
Sent: Thursday, March 5, 2020 10:12 AM
To: TERRI ANDERSON
Subject: Special Reserve Account Agreement for Villas on Raiford

Terri,

I'm in the process of drafting a Special Reserve Account Agreement as required in 10TAC 10.404(d) for the above property. Our agreement lists that notifications must go to a contact at the bank that holds the account. I see the account for this property is held at Wells Fargo, but I need the name, address, and phone number of a specific point of contact at this bank.

Can you please provide that for me? If you have a copy of an executed Agreement please forward that as well.

Warmly,

Karen Treadwell, Associate Asset Manager
Ph. (512) 936-7839
221 E. 11th St. Austin, TX 78701-2410
Asset Management Division
Texas Department of Housing (TDHCA)
karen.treadwell@tdhca.state.tx.us

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)).

terri_l_anderson@msn.com

From: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>
Sent: Friday, December 11, 2020 4:19 PM
To: 'TERRI ANDERSON'; Bobby Wilkinson
Cc: Lee Ann Chance; Toni Jackson; Monita Henley; Homero Cabello; Beau Eccles
Subject: RE: Villas at Raiford, TDHCA #09913
Attachments: Re: Villas at Raiford, TDHCA #08096 - HUD Subordination

Terri,

As you pointed out in the attached prior email, you did not execute the Agreement that the Department provided to you. However, the requirement for a Special Reserve Account comes from the Subaward Agreement.

Thank you,

Rosalio Banuelos

Director of Multifamily Asset Management
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: TERRI ANDERSON <Terri_L_Anderson@msn.com>
Sent: Friday, December 11, 2020 3:01 PM
To: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>; Bobby Wilkinson <bobby.wilkinson@tdhca.state.tx.us>
Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@banksfirm.com>; Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello <homero.cabello@tdhca.state.tx.us>; Beau Eccles <beau.eccles@tdhca.state.tx.us>
Subject: RE: Villas at Raiford, TDHCA #09913

Good afternoon,

Please see the attached email from Karen Treadwell dated 3/5/2020 stating she was “in the process of drafting a **Special Reserve Account Agreement** as required in TAC 10 10.404(d)” for the subject property.

Please see the entire rule quoted below for your convenience. The first sentence in Paragraph (d) of the rule as highlighted states the rule “will be established in accordance with a written agreement with the Development Owner.” The second sentence in Paragraph (d)(3) of the rule as highlighted states “A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.”

“(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner. (1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the

*Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. The account will be structured to require Department concurrence for withdrawals. (2) All disbursements from the account must be approved by the Department. (3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A **Special Reserve Account Agreement** will be drafted by the Department and executed by the Department and the Development Owner. (4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.”*

In preparation for our Board Appeal, please provide a copy of the **Special Reserve Account Agreement** executed by the Department and the Development Owner as required by TAC 10 10.404(d) heretofore establishing agreement.

Thank you,
Terri L. Anderson, President
Anderson Development & Construction, LLC
(972) 567-4630

From: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>
Sent: Wednesday, December 9, 2020 2:01 PM
To: 'TERRI ANDERSON' <Terri_L_Anderson@msn.com>; Bobby Wilkinson <bobby.wilkinson@tdhca.state.tx.us>
Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@banksfirm.com>; Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello <homero.cabello@tdhca.state.tx.us>; Beau Eccles <beau.eccles@tdhca.state.tx.us>
Subject: RE: Villas at Raiford, TDHCA #09913

Terri,

Please see the attached letter in response to your appeal. As indicated in the letter, if you are not satisfied with this determination, you may appeal in writing directly to the Board in accordance with 10 TAC §1.7(f). The appeal must be submitted in writing within seven calendar days from the date of this letter.

Thank you,

Rosalio Banuelos
Director of Multifamily Asset Management
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: TERRI ANDERSON <Terri_L_Anderson@msn.com>
Sent: Tuesday, December 8, 2020 11:11 AM
To: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>; Bobby Wilkinson <bobby.wilkinson@tdhca.state.tx.us>
Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@banksfirm.com>; Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello <homero.cabello@tdhca.state.tx.us>; Beau Eccles

<beau.eccles@tdhca.state.tx.us>

Subject: RE: Villas at Raiford, TDHCA #09913

Good morning,

I am just checking in on our request for approval of our loan documents. Time is of the essence as the initial request to approve the loan documents began approximately one month ago.

Thank you,
Terri

From: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>

Sent: Friday, December 4, 2020 2:05 PM

To: 'TERRI ANDERSON' <terri_l_anderson@msn.com>; Bobby Wilkinson <bobby.wilkinson@tdhca.state.tx.us>

Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@bankslawfirm.com>; Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello <homero.cabello@tdhca.state.tx.us>; Beau Eccles <beau.eccles@tdhca.state.tx.us>

Subject: RE: Villas at Raiford, TDHCA #09913

Good afternoon, Terri:

The appeal response letter is in routing for review. We will forward it to you as soon as it is available.

Thank you,

Rosalio Banuelos

Director of Multifamily Asset Management
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: TERRI ANDERSON <terri_l_anderson@msn.com>

Sent: Friday, December 4, 2020 12:59 PM

To: Bobby Wilkinson <bobby.wilkinson@tdhca.state.tx.us>

Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@bankslawfirm.com>; Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello <homero.cabello@tdhca.state.tx.us>; Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>

Subject: Re: Villas at Raiford, TDHCA #09913

Good afternoon,

Please provide an update on this request and approval of our loan documents.

Thank you,
Terri

On Nov 25, 2020, at 4:58 PM, TERRI ANDERSON <Terri_L_Anderson@msn.com> wrote:

-Terri L. Anderson

Sent from my iPhone (972) 567-4630

ROMANS: 8:37

Good evening Mr. Wilkinson,

Please see the attached appeal letter and supporting documentation submitted on behalf of Villas on Raiford Carrollton Senior Housing, LLC for your consideration to reverse Staff's determination issued on November 20, 2020 per the email below.

Please feel free to call me with any questions, concerns, or requests for additional information at (972) 567-4630.

Have a very Happy Thanksgiving!

Respectfully submitted,
Terri

Terri L. Anderson, President
Anderson Development & Construction, LLC
(972) 567-4630

From: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>
Sent: Friday, November 20, 2020 3:42 PM
To: 'TERRI ANDERSON' <Terri_L_Anderson@msn.com>
Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; 'Toni Jackson' <tjackson@bankslawfirm.com>;
Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello
<homero.cabello@tdhca.state.tx.us>
Subject: RE: Villas at Raiford, TDHCA #08096 - HUD Subordination

Terri,

While the original rules may not have stated that cash from refinancing is part of cash flow, this proposed refinance would increase the amount of the debt service, which is part of the cash flow definition that you referenced. Therefore, the addition to 10 TAC §10.404(d)(1) of the language regarding refinancing clarified the Department's position that already existed, rather than added a new requirement. Staff's determination is that cash flow includes proceeds from the refinancing and that the required percentage of cash flow must be deposited into the special reserve account.

It seems that there are two ways to get this request to the board. You may appeal this determination to the Executive Director under 10 TAC 1.7, and include in your request for appeal the grounds for the Appeal based on the disposition of underlying documents. If the Executive Director denies the appeal, it could then be requested to be put before the board. Alternatively, you could seek a waiver of 10.404(d)(1), but again, you would need to explain the basis for the waiver.

Please let me know how you would like to move forward. If you believe there is another way to get this request to the board, please let me know.

Thank you,

Rosalio Banuelos
Director of Multifamily Asset Management

Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: Rosalio Banuelos
Sent: Friday, November 20, 2020 1:47 PM
To: 'TERRI ANDERSON' <Terri_L_Anderson@msn.com>
Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@bankslawfirm.com>;
Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello
<homero.cabello@tdhca.state.tx.us>
Subject: RE: Villas at Raiford, TDHCA #08096 - HUD Subordination

Terri,

I am looking into this issue with Legal, but Board action may be necessary. Could you submit a formal request, or if board approval is needed, should we use the emails you have submitted?

Thank you,

Rosalio Banuelos

Director of Multifamily Asset Management
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: TERRI ANDERSON <Terri_L_Anderson@msn.com>
Sent: Friday, November 20, 2020 12:39 PM
To: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>
Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson <tjackson@bankslawfirm.com>;
Monita Henley <monita.henley@tdhca.state.tx.us>; Homero Cabello
<homero.cabello@tdhca.state.tx.us>
Subject: Re: Villas at Raiford, TDHCA #08096 - HUD Subordination

Rosalio,

Please add our development to the board agenda to the extent staff continues to disagree with our legal obligations.

Thank you,
Terri

-Terri L. Anderson
Sent from my iPhone (972) 567-4630

ROMANS: 8:37

On Nov 18, 2020, at 2:16 PM, Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us> wrote:

This is the Special Reserve Account Agreement, which is different from the amendments to remove the quarterly reporting requirement.

Rosalio Banuelos

Director of Multifamily Asset Management
Texas Department of Housing and Community Affairs
221 E. 11th Street | Austin, TX 78701
Office: 512.475.3357

From: TERRI ANDERSON <[Terri L Anderson@msn.com](mailto:Terri_L_Anderson@msn.com)>

Sent: Wednesday, November 18, 2020 2:07 PM

To: Rosalio Banuelos <rosalio.banuelos@tdhca.state.tx.us>

Cc: Lee Ann Chance <leeann.chance@tdhca.state.tx.us>; Toni Jackson

<tjackson@banksfirm.com>; Monita Henley <monita.henley@tdhca.state.tx.us>

Subject: Re: Villas at Raiford, TDHCA #08096 - HUD Subordination

Thank you Rosalio. Please review Page 2, Paragraph 4 of the attached agreement.

<09913 Villas on Raiford - Appeal of Staff Determination re Special Reserve Account.pdf>

<07-REARules.pdf>

<Part 3 – Subaward Agreement.pdf>

<LURA.pdf>



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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December 9, 2020

Writer's direct dial: (512) 475-3296
Email: bobby.wilkinson@tdhca.state.tx.us

Terri L. Anderson
Villas on Raiford Carrollton Senior Housing, LLC
1100 Raiford Rd
Carrollton, TX 75007
Via Email Transmission: terri_l_anderson@msn.com

RE: REQUEST FOR APPEAL FOR VILLAS ON RAIFORD (THE DEVELOPMENT)
HTC #07303/08096, AND EXCHANGE #15090009913

Dear Ms. Anderson:

The Texas Department of Housing and Community Affairs received your letter dated November 25, 2020, regarding the Development. In your letter, you request an appeal in accordance with 10 TAC 1.7(e) of staff's determination sent November 20, 2020, regarding 10 TAC §10.404(d)(1) that states:

Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department.

Staff determined that cash flow includes proceeds from the refinancing of the Development and that the required percentage of cash flow must be deposited into the Special Reserve Account. You state that, in accordance with the Subaward Agreement, the Development is subject to the rules under the QAP in effect for the year in which the Tax Credits were awarded. You state that cash flow is not defined in the 2007 QAP or in Section 8.3 of the Subaward Agreement, but that it is defined in §1.31(b)(3) the 2007 Real Estate Analysis (REA) Rules as "*funds available from operations after all expenses and debt service required to the paid has been considered.*" Since the section noted above was not added to the Department's rules until 2015, and also was not part of the original definition of Special Reserve that was added to the rules in 2014, you assert that it does not apply to this Development. You state furthermore that the Tax Credit Exchange Proceeds awarded to the Development are subordinate to the FHA 221(d)(4) loan that preclude the uses of proceeds to fund reserve accounts.



While the original rules may not have specified that cash from refinancing is part of cash flow, the proposed refinance will increase the amount of the debt service, which is part of the cash flow definition that you referenced from §1.31(b)(3) the 2007 REA Rules. Furthermore, it appears to me that the addition to 10 TAC §10.404(d)(1) of the language regarding refinancing merely clarified the Department's existing position as to the meaning of "funds available from operations after all expenses and debt service required to be paid have been considered", rather than added a new requirement. Therefore, I sustain staff's determination that cash flow includes proceeds from the refinancing and that the required percentage of cash flow must be deposited into the Special Reserve Account.

Though I am in agreement with staff on this issue, if you are not satisfied with this determination, you may appeal in writing directly to the Board in accordance with 10 TAC §1.7(f). The appeal must be submitted in writing within seven calendar days from the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bobby Wilkinson" with a stylized flourish at the end.

Bobby Wilkinson
Executive Director

BW/lac

VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC

November 25, 2020

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
201 East 11th Street
Austin, TX 78701

Re: TDHCA #09913 – Villas on Raiford
Carrollton, TX

Dear Mr. Wilkinson,

In accordance with 10 TAC 1.7, please accept this letter and the attached documentation in support of an appeal of Staff's November 20, 2020 determination that the following highlighted sentence below that was first introduced into the Department rules in 2015 is applicable to a 2007 Housing Tax Credit Award:

§10.404. Reserve Accounts.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. *Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department.* The account will be structured to require Department concurrence for withdrawals.

Such a determination would require the deposit of 20% of cash out refinance proceeds for Villas on Raiford Carrollton Senior Housing, LLC ("the Development Owner" or "the Owner") into the Special Reserve Account established in accordance with the Tax Credit Exchange Program ("TCEP") Subaward Agreement ("the Agreement") between the Property Owner and the Department dated September 1, 2010.

It is important to note the first time the Special Reserve Account was defined by the Department was in 2014 in **§10.404. Reserve Accounts (i) Special Reserve Account (1)**, and the 2014 rule *did not* include the highlighted sentence above or reference refinancing or other fund raising at all as quoted below:

"§10.404. Reserve Accounts. (i) Special Reserve Account. If the funding program requires the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be

established in accordance with the program's written agreement with the Development Owner. (1) The Special Reserve Account is generally funded annually through an agreed upon percentage of net cash flow generated by the Development or as otherwise set forth in the written agreement. All disbursements from the account must be approved by the Department. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made for related party loans. For those financial institutions that are unable to set up the account with Department approval authority for disbursements, a Special Reserve Account Agreement will be drafted and executed by the Department, Development Owner and financial institution representative.”

The Development Owner applied for Housing Tax Credits in 2007 and received a partial 2007 Housing Tax Credit Award and 2008 Housing Tax Credit Forward Commitment. Due to the economic crisis of 2008, the financing was unable to close under conventional means. As a result, the Property received an award of TCEP funds from the Department under Section 1602 of the American Reinvestment and Recovery Act of 2009 in lieu of tax credits.

Villas on Raiford (“the Property”) was 100% financed by Federal funding sources, with the exception of equity required to fund certain escrow accounts. The FHA 221d4 first lien precluded the use of loan proceeds to fund reserve accounts. TCEP funds are subordinate to the FHA 221d4 loan, which also explicitly precluded the use of proceeds to fund reserve accounts.

Paragraph 8.3 of the Agreement dated September 1, 2010 between the Department and the Development Owner states the following:

Section 8.3 Special Reserve Account

In the event that any net cash flow is generated by the Development in any given Fiscal Year during the Compliance Period or the Extended Use Period, then after assuring that the reserves required by Sections 8.1 and 8.2 are fully funded, the participation percentage of such net cash flow shall be placed in a special reserve account to assist residents to provide assistance with expenses associated with their tenancy. Resident expenses that may be paid from such special reserve account include application costs, security deposits or utilities for any unit leased to residents with incomes at or below 50% of the area median family income, or other purposes as approved by the Department. The level of special reserve account participation is outlined in **Exhibit K**. The Department shall have prior approval rights for any disbursement of funds from such account, which approval shall not be unreasonably withheld.

In accordance with the Agreement, the rules in effect for the Property are defined as follows:

“**QAP**” means the “**Qualified Allocation Plan and Rules with Amendments**” in effect for the State for the year in which the Tax Credits were awarded to the Development Owner with respect to the Development as published in Title 10 of the Texas Administrative Code.

Cash Flow is not defined in the 2007 QAP or the Agreement. However, **Exhibit G** to the Agreement specifically prescribes the schedule for calculating Cash Flow for operations, and does not include financing activities in the scheduled calculation. Additionally, the **2007 Real Estate Analysis Rules** (“the

REA Rules”) §1.31 General Provisions (b) Definitions states, “Many of the terms used in this subchapter are defined in the Department’s Housing Tax Credit Program Qualified Allocation Plan and Rules, known as the “QAP”, as proposed. Those terms that are not defined in the QAP or which may have another meaning when used in subchapter B of this title, shall have the meanings set forth in this subsection unless the context clearly indicates otherwise.” Although the QAP does not define Cash Flow; it is defined in the REA Rules as follows: “(3) Cash Flow--The funds available from operations after all expenses and debt service required to be paid has been considered.” The REA Rules definition is consistent with **Exhibit G**.

The property was placed in service in 2011. Of the total 180 units, 172 are affordable; however, only 18 affordable units qualify for use of the Special Reserve Account proceeds due to the highly prescriptive restrictions for residents with incomes at or below 50% of the AMI. As of 10/31/2020, the account balance is \$325,176.15, and no funds have ever been withdrawn or used by our qualifying 30% AMI residents.

Finally, the Agreement and all other Department documents are subordinate to HUD’s Regulatory Agreement. The HUD Regulatory Agreement specifically defines excess cash flow that could be disbursed or otherwise transferred into TDHCA’s Special Reserve Account.

We respectfully request granting of this appeal as the signed agreements between the parties in addition to the Department’s published rules established in 2007 through 2010 clearly do not require deposits to the Special Reserve Account for any excess cash flow resulting from refinancing or fund raising activities.

Please contact me at (972) 567-4630 if you have any questions or concerns.

Respectfully submitted,

VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC, a Texas limited liability corporation



By: Villas on Raiford, LLC, its manager

By: AD Villarai, LLC, its sole manager

By: Terri L. Anderson, its sole member and manager

TAX CREDIT EXCHANGE PROGRAM
SUBAWARD AGREEMENT

No. 150900 - 09913

TAX CREDIT EXCHANGE PROGRAM SUBAWARD AGREEMENT (this "**Agreement**") is made and entered into ^{AS OF} on SEPTEMBER 1, 2010 by and between TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, established by Chapter 2306, Texas Government Code with a mailing address of 221 East 11th Street, P.O. Box 13941, Austin, Texas 78711-3941 (together with its successors, the "**Department**") and Villas on Raiford Carrollton Senior Housing, LLC (together with its successors and assigns, the "**Development Owner**", with a mailing address).

RECITALS

WHEREAS, the Department has entered into a grant agreement with Treasury for a grant of funds in lieu of federal low-income housing tax credits (the "**Tax Credits**") under Section 42 of the Internal Revenue Code of 1986, as amended (the "**Code**"), pursuant to the Tax Credit Exchange Program (the "**Exchange Program**") under Sections 1404 and 1602 of the Recovery Act;

WHEREAS, the Department is a "designated State housing credit agency" within the meaning of the Recovery Act and has the authority to make subawards of Exchange Program funds (the "**Exchange Program Funds**") to eligible applicants in accordance with the Program Requirements;

WHEREAS, the Development Owner intends to acquire, develop and operate on the land described on Exhibit A, attached hereto and made a part hereof for all purposes (the "**Development Site**") as a rental housing development (the Development Site together with all Improvements located or to be located thereon are collectively referred to as the "**Development**");

WHEREAS, the Governing Board at its properly posted and duly called meeting with a quorum of members present and voting adopted by Board Resolution No. 09-047 on July 30, 2009, a policy which sets forth, among other things, the policies, rules and procedures by which the Department will implement the Exchange Program and allocate Exchange Funds to eligible applicants (the "**Exchange Program Policy**");

WHEREAS, the Department has determined that the Development Owner has been unable to obtain a commitment from an investor to purchase the Tax Credits in an amount sufficient to make the Development financially feasible after having made a Good Faith Effort to obtain equity from sources other than the Exchange Program;

WHEREAS, the Development Owner has submitted an application to the Department for the Subaward to assist in the financing of the Development as submitted in its original application for Tax Credits;

WHEREAS, the Development Owner has represented that it will use the Exchange Program Funds to finance the development of a "qualified low-income building" within the meaning of Section 42 of the Code;

WHEREAS, the Department has agreed to provide the Subaward provided that (a) the Development Owner executes and delivers the documents and instruments contemplated herein, all in form and substance satisfactory to the Department and its counsel (b) and the Development Owner continues to operate the Development in a manner consistent with Section 42 of the Code, Chapter 2306 Texas Government Code and the rules and policies established by the Department;

WHEREAS, the Department has approved the Subaward to the Development Owner in the aggregate amount outlined in Exhibit "K" (the "Subaward Agreement Summary"), and the Development Owner has agreed to accept the Subaward subject to the terms and conditions set forth herein; and

WHEREAS, the parties have agreed that some or all of the Security Instruments shall be filed in the Real Property Records of the county in which the Development Site is located.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

The capitalized terms used in this Agreement shall have the meanings ascribed to them in the Recitals hereto and in this Article I; provided that certain capitalized terms used and not defined herein shall have the meanings ascribed to them in Section 42 of the Code or in the relevant year Qualified Allocation Plan (Title 10 Texas Administrative Code Chapter 49 and/or 50).

"Accountant's Opinion" shall have the meaning attributed thereto in Section 9.1C.

"Action Plan", shall have the meaning attributed thereto in Section 4.3B.

"Affiliate" means 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, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all general partners, members, manager, limited partners and principals with an ownership interest.

“Agreement” means this Tax Credit Exchange Program Subaward Agreement, including any subsequent amendments.

“Architect” means the Person designated in the Exchange Application and/or the Construction Contract as being engaged as the architect for the Development.

“Asset Manager” means the Department or its designee, and any successor thereto chosen by the Department.

“Asset Management Fee” means the annual fee payable for the services of the Asset Manager pursuant to Section 10.3 of this Agreement, as in effect from time to time.

“Assignment of Construction Documents” means the agreement by and between the Department and the Development Owner pursuant to which the Development Owner has assigned all of its rights under the Construction Documents to the Department as additional security for performance by the Development Owner of all of its obligations under this Agreement

“Assignment of Property Management Agreement” means the agreement by and between the Department and the Development Owner pursuant to which the Development Owner has assigned all of its rights under the property management agreement to the Department as additional security for performance by the Development Owner of all of its obligations under this Agreement.

“Authorized Officer of the Development Owner” means the Person(s) identified in **Exhibit J** hereof, and any other person designated in writing to the Department by an Authorized Officer of the Development Owner.

“Budget” means the final sources and uses for the Development as evidenced in the Department’s underwriting report attached hereto as **Exhibit B**. The Budget must clearly show the total Development Costs of the Development and the total amount of Exchange Program Funds awarded to the Development.

“Business Day” means Monday through Friday excluding state and federal holidays.

“Closing” means the date all necessary documents hereunder for funding have been executed and delivered, and made available for recording if necessary.

“Code” means the Internal Revenue Code of 1986, as amended, and as the context may require, the Treasury Regulations promulgated thereunder, and any published rulings, procedures and notices thereunder.

“Compliance Period” means the compliance period described in Section 42(i)(1) of the Code, as applicable to particular building(s) in the Development.

“Construction” or “construction” whether upper case or lower case, refers to construction activity broadly and includes new construction and rehabilitation

“Construction Completion Date” means the date on which the Architect certifies that construction of the Development is substantially complete, and that the Development is ready for its intended use as evidenced by receipt of certificates of occupancy (or the jurisdictional equivalent).

“Construction Contract” means the Construction Contract by and between the Development Owner and the Contractor.

“Construction Documents” means the Construction Contract, including, without limitation, the general conditions, project manual (including general requirements and technical specifications, drawings or sketches), the Plans and Specifications, and any addenda thereto, the Construction Schedule, and any and all trade contracts pursuant to which construction of the Improvements will be accomplished, as the same may be amended from time to time, when agreed upon by the Department.

“Contractor” means the Person identified as such in Construction Contract.

“Control” (and the related terms “Controlling,” “Controlled by,” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of outstanding securities, equity, or other beneficial ownership interests, by contract or otherwise.

“Cost Certification” means the written certification of a certified public accountant as to the itemized amounts of the construction and development costs of the Development, similar to documents submitted to the Department in order to obtain IRS Form(s) 8609 for the Development or as otherwise required by the Department. Cost Certification shall be conducted in accordance with the QAP and the Department’s Cost Certification Manual, save and except the deadline for submission to the Department, which is defined in Section 7.3 of this Agreement.

“Developer” means the Person entering into the Development Agreement and receiving the Developer Fee, and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

“Developer Fee” means the fee payable to the Developer pursuant to the Development Agreement and Section 4.6 of this Agreement (which fee cannot exceed the limits identified in the QAP).

“Development” has the meaning assigned to such term in the Recitals.

“Development Agreement” means the development agreement by and between the Development Owner and the Developer.

“Developer Assignment, Pledge and Security Agreement” means the agreement by and among the Department, the Development Owner and the Developer pursuant to which the Developer has pledged all of its rights under the Development Agreement pertaining to the Development to the Department as additional security for performance by the Development Owner of all of its obligations under the this Agreement.

“Development Costs” means the amounts set forth in the Budget required to complete the Development.

“Development Owner Parties” has the meaning assigned to it in Section 7.1P.

“Development Site” means the real property which the Development Owner owns, or will acquire, or in which the Owner has, or will acquire a ground lease acceptable to the Department, upon which the Improvements will be constructed and which is described in **Exhibit A**.

“Disbursement Agreement” means the Disbursement Agreement dated on or about the date of Closing executed by Lender, Development Owner and the Department setting forth, among other things, their mutual agreement regarding the manner in which the construction of the Development will proceed.

“Draw Documents” shall have the meaning attributed thereto in Section 4.1B.

“Eligible Basis” means the amount determined for each building in accordance with Section 42(d) of the Code, as of the end of the first year of the "credit period" (as such term is defined in Section 42(f)(1) of the Code) applicable to each building, including any increases for buildings located in "high cost areas" under Section 42(d)(5)(C) of the Code.

“Eligible Costs” means any of the line-item expenditures to be reimbursed with Exchange Program Funds and such additional expenditures as may be approved by the Asset Manager from time to time. The payment of such costs must be permissible under the Program Requirements. Eligible Costs for each residential rental building in a Development, determined at the time of Cost Certification, may not exceed 85% of such building's eligible basis.

“Entity” means any Person other than an individual, including general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, business trust, cooperative or other business association, however organized.

“Event of Bankruptcy” or **“Bankruptcy”** means, as to a specified Person:

(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of such property, or ordering the winding-up or liquidation of such Person's affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property,

or the making by him of any assignment for the benefit of creditors, or the taking of action by the Person in furtherance of any of the foregoing.

“**Event of Default**” shall have the meaning attributed thereto in Section 11.1A.

“**Excess Amount**” shall have the meaning attributed thereto in Section 2.1C.

“**Excess Development Costs**” shall have the meaning attributed thereto in Section 7.2A.

“**Exchange Application**” means the application submitted by or on behalf of the Development Owner to the Department in connection with the award of the Exchange Program Funds to the Development, as amended and supplemented from time to time.

“**Exchange Program**” shall have the meaning attributed thereto in the Recitals.

“**Exchange Program Funds**” shall have the meaning attributed thereto in the Recitals.

“**Exchange Program Policy**” shall have the meaning attributed thereto in the Recitals.

“**Expiration Date**” means December 31, 2011, as such date may be extended in accordance with Section 4.1E.

“**Extended Use Period**” means the period beginning at the end of the Compliance Period and ending fifteen years thereafter.

“**Fifty Percent Construction Completion Date**” means the date on which the Architect certifies that construction of the Development is fifty-percent (50%) complete based upon the total of hard costs incurred for work completed as a percentage of total hard costs in the Construction Documents. In case of an acquisition or rehabilitation, Architect certifies that fifty-percent of costs as outlined in the budget have been incurred. For developments involving acquisitions and rehabilitation, this date can be the date when 50% of the funds are expended.

“**Fiscal Quarter**” means any of the three (3) consecutive month periods of each Fiscal Year ending on March 31, June 30, September 30 and December 31.

“**Fiscal Year**” means the twelve (12)-month period which begins on January 1 and ends on December 31 of each calendar year.

“**Force Majeure**” shall have the meaning attributed thereto in Section 12.13.

“**General Partner**” means any general partner or managing member, as applicable, of the Development Owner.

“**Good Faith Effort**” means attempts by the Development Owner to secure final financing commitments from one or more investors to purchase the Tax Credits as determined by the Department in its reasonable judgment.

“Governmental Authority” means the Department, HUD, the IRS or any other federal, state or local governmental agency or authority having jurisdiction over the particular matter to which reference is being made.

“Guidelines” means the *“Application and Terms and Conditions: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009”* published by Treasury in May 2009, and any updates, modifications or successor guidelines thereto.

“HUD” means the U.S. Department of Housing and Urban Development and its successors.

“Improvements” means the buildings, structures, improvements, alterations and functionally related facilities now existing or hereafter constructed or placed upon the Development Site, including any future replacements and additions thereto.

“Lender” means any third party loaning funds to be secured in whole or in part by the Development.

“Low-Income Unit” means the units in the Development identified in the Exchange Application and/or the LURA that are to be held for occupancy by the Development Owner and occupied in such a manner as to qualify such units as “low-income units” under Section 42(i)(3) of the Code.

“LURA” means the Land Use Restriction Agreement between the Department and the Development Owner which is binding upon the Development Owner’s successors in interest, that encumbers the Development with respect to the requirements of Title 10 TAC, Chapters 49 and 50, Chapter 2306, Texas Government Code, and the requirements of the Code, §42 (§2306.6702).

“Marketing Plan” for the Development is further described herein under Section 9.2A of this Agreement.

“Material Change Order” means a change order to the Budget, construction contract or any of the other Construction Documents in connection with the construction of the Improvements that would result in an overall increase or decrease in excess of five percent (5%) in development cost, reflected in the Budget.

“Minimum Set-Aside Test” means the set-aside test described in Section 42(g)(1) of the Code selected by the Development Owner with respect to the Award of Tax Credits to the Development pursuant to the Tax Credit Allocation, as specified in the Application.

“Mortgage” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, as amended, restated, modified or supplemented from time to time on the Development, or any portion thereof, given by the Development Owner to any Lender to secure any indebtedness, together with any other documents pertaining to said indebtedness, which were required by the lender as a condition to making a Mortgage Loan.

“**Mortgage Loans**” means the loans listed on **Exhibit I**, or any replacements or substitutes thereof, as approved by the Department in its reasonable discretion pursuant to the terms of this Agreement.

“**Mortgage Loan Documents**” means the documents governing, securing and/or evidencing the Mortgage Loans.

“**Person**” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

“**Plans and Specifications**” means the plans and specifications for the construction of the Development, including, without limitation, specifications for materials, and all amendments and modifications thereof.

“**Program Requirements**” means the Exchange Program Policy and any and all requirements for receiving and maintaining a Subaward of Exchange Program Funds as set forth in Sections 1404 and 1602 of the Recovery Act, the Guidelines, and any other rules, regulations, guidelines or notices published by the IRS or Treasury from time to time with respect to the Exchange Program that are applicable to the Development.

“**Property Management Agreement**” means the agreement between the Development Owner and the Property Manager providing for property management services to the Development, as amended and/or replaced from time to time.

“**Property Management Fee**” means the fee payable to the Property Manager pursuant to the terms of the Property Management Agreement.

“**Property Manager**” means any Person acting as Property Manager under the Property Management Agreement.

“**QAP**” means the “**Qualified Allocation Plan and Rules with Amendments**” in effect for the State for the year in which the Tax Credits were awarded to the Development Owner with respect to the Development as published in Title 10 of the Texas Administrative Code.

“**Qualified Tenants**” means tenants whom at the time of their initial occupancy of the Development, satisfy the income limits applicable under the Minimum Set-Aside Test under executed leases with terms of not less than six (6) months at rentals meeting the requirements of the Rent Restriction Test.

“**Recapture Event**” shall have the meaning attributed thereto in Section 6.1.

“**Recapture Mortgage**” means the Mortgage executed by the Development Owner to the Department to secure the obligation of the Development Owner to repay all or a portion of the Subaward in accordance with the terms of this Agreement.

“Recovery Act” means the American Recovery and Reinvestment Act of 2009, as amended from time to time.

“Rent Restriction Test” means the test described in Section 42(g)(2) of the Code whereby the gross rent charged to tenants of the Low-Income Units in the Development may not exceed thirty percent (30%) of the applicable qualifying income levels based upon the Minimum Set-Aside Test.

“Required Placed In-Service Date” (also, **“Placed In-Service Date”**) means the date by which at least one unit in each building in the Development that must be Low-Income Units, and be ready and available for occupancy in accordance with State and local laws, which date shall not be later than the date outlined in **Exhibit K**.

“Required Percentage” means the minimum percentage of units in the Development that must be Low-Income Units, which shall be the greater of the Minimum Set-Aside and the Subaward Fraction.

“Security Instruments” includes any and all of the following if applicable to this award, (i) the Collateral, (ii) any Assignments, Pledges and Security Agreements (iii) the Assignment of Property Management Agreement, (iv) the Assignment of Construction Documents, (v) the Option Agreement by and among the Department, the Development Owner and the Developer pursuant to which the Department has been granted certain rights to acquire limited direct ownership as provided under this Agreement and the Option Agreement, (vi) the LURA, (vii) the Recapture Mortgage, (viii) the Subordination Agreement, (ix) and any and all other documents, instruments, and writings whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, Mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the Program Requirements.

“State” means the State of Texas.

“Subaward” means the Subaward of Exchange Program Funds in the aggregate amount to be made by the Department to the Development Owner to assist in the financing of the Construction of the Development pursuant to all of the terms and conditions of this Agreement.

“Subordination Agreement” means the Subordination Agreement executed by the Department, the Lender and/or the Development Owner.

“Subaward Fraction” means the lesser of (i) the fraction obtained by dividing the amount of the Subaward, once fully disbursed, into the aggregate Eligible Basis of the Development, and (ii) the “applicable fraction” set forth in the LURA.

“Tax Credit Allocation” means the allocation of Tax Credits to the Development Owner with respect to the Development pursuant to the QAP, which allocation was exchanged by the Department for Exchange Program Funds.

“**Tax Credits**” means federal low-income housing tax credits under Section 42 of the Code.

“**Tenant Income Certification**” means a tenant’s initial Tax Credit certification, including the tenant income certification/certificate of resident eligibility, all sources used in verifying income and assets (including, but not limited to, third party verification, checking and savings accounts, pay stubs, verification of assets, etc.), a copy of one completed lease signed and dated for each building in the Development, and a copy of the first and last page of each resident lease for each Low-Income Unit in the Development, showing the start date of the lease and signature of the resident(s) and Development Owner.

“**Treasury**” means the United States Department of the Treasury, including the United States of America acting through the Treasury.

“**Treasury Regulations**” means the temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“**Uniform Application**” means the 2009 Uniform Application promulgated and utilized by the Department for funding of certain multifamily housing finance programs.

ARTICLE II **GRANT OF EXCHANGE PROGRAM FUNDS**

Section 2.1 Subaward

A. The Department shall make the Subaward to the Development Owner pursuant to the terms and conditions of this Agreement. In no event shall the aggregate amount of funds advanced pursuant to this Agreement exceed the lesser of the amount outlined in **Exhibit K** or the amount determined by the Department to be necessary for the financial feasibility of the Development and its viability as a qualified low-income housing project throughout the Compliance Period and the Extended Use Period. The Subaward is conditioned on the Closing.

B. The Development Owner shall receive the Subaward and use the proceeds thereof to pay Eligible Costs incurred by the Development Owner in connection with the Construction of the Development. The funding of the Subaward (and any portion thereof) is expressly conditioned upon the Development Owner complying with all of the Program Requirements and the terms of this Agreement.

C. If, at the time of Cost Certification, the Department shall determine that (i) the amount of the Subaward is more than the amount necessary for the financial feasibility of the Development and its viability as a qualified low-income housing project throughout the Compliance Period, or (ii) the total amount of the Subaward exceeds 85% of the aggregate Eligible Basis of the Development as determined by the Department in accordance with Section 42 of the Code (the “Excess Amount”), the Department shall provide the Development Owner with written notice thereof and the Development Owner shall pay, in immediately available

funds within thirty (30) Business Days from the date of such notice, an amount equal to the Excess Amount. In addition to the foregoing, the Department may take any other remedial action it deems necessary or advisable to fulfill its program obligations to Treasury or otherwise carryout the principal purposes of the Exchange Program. The Development Owner may appeal the determination and repayment of such Excess Amount in accordance with the appeal process outlined in 10 TAC §1.7, or successor regulations.

D. The Department acknowledges that it has entered into a grant agreement with Treasury for a grant of Exchange Program Funds sufficient to fulfill its obligations under this Agreement and the other Tax Credit Exchange Program Subaward Agreements that the Department has entered into, or hereafter enters into, with other development owners, including without limitation, the Department's obligation to fund the Subaward in accordance with the terms of this Agreement; provided, however, the Development Owner acknowledges that each disbursement of the proceeds thereof is contingent upon the disbursement of sufficient Exchange Program Funds by Treasury to the Department for reimbursement of Eligible Costs incurred by the Development Owner with respect to the Development. If the Department fails to receive adequate Exchange Program Funds from Treasury, or if the Department is on notice that delivery of the Exchange Program Funds will be materially delayed, the Department shall notify the Development Owner in writing within a reasonable period of time and shall not be liable for failure to make payments under this Agreement.

Section 2.2 Term

A. This Agreement shall be effective upon its execution and delivery and shall remain in full force and effect until the expiration of the Compliance Period and the Extended Use Period, unless earlier terminated in accordance with the terms hereof.

ARTICLE III
INITIAL DISBURSEMENT OF EXCHANGE PROGRAM FUNDS

Section 3.1 Due Diligence and Final Acceptance Requirements

A. Prior to the release of any Exchange Funds under this Agreement and not more than 60 days after the date of Closing, Development Owner shall provide any and all evidence of satisfaction of all outstanding award conditions including, without limitation, the items described on Exhibit C of this Agreement.

Section 3.2 Other Conditions Prior to Release of Funds

A. Prior to the initial release of Exchange Funds under this Agreement, the Development Owner shall perform the items described below.

B. The Development Owner shall execute and deliver this Agreement and all other required documents to the Department.

C. The Development Owner shall execute, record if applicable, and deliver all Security Instruments prior to funding. If the documents were recorded, a copy of such recorded document must also be submitted to the Department showing the recorders stamp.

D. The Development Owner shall provide a copy of any partnership or other agreements that confer upon the Department any right, in consultation with other secured parties, to replace the General Partner or approve the new General Partner if replaced by a third party whether under any other agreement or otherwise.

E. The Developer and the Development Owner shall execute and deliver the Security Instruments to which they are a party to the Department. Upon request of the Development Owner, the Department shall subordinate the Security Instruments to such of the Mortgage Loans as the Department determines necessary or advisable to permit the financing of the Development.

F. The Development Owner shall timely complete the "Quarterly Progress Report" in the form attached hereto as **Exhibit H** and deliver such report to the Department throughout the required period.

G. The Development Owner shall have paid any applicable fees due to the Department with respect to the Tax Credit Allocation.

H. The Development Owner shall have provided evidence satisfactory to the Department that construction will commence prior to the required construction commencement date outlined in **Exhibit K**.

I. To the extent necessary to fund interim development costs, the Development Owner shall provide a binding construction loan commitment in the amount and for the term deemed appropriate by the Department.

J. If any disbursement of Exchange Program Funds is requested upon the Closing, the Development Owner shall complete a closing Draw Request and provide such back-up documentation as may be reasonably required by the Department to support the Draw Request.

ARTICLE IV **DISBURSEMENTS OF EXCHANGE PROGRAM FUNDS**

Section 4.1 Request for Exchange Program Funds from Treasury

A. The Department shall use the Exchange Program Funds it receives from Treasury which have been subawarded to the Development Owner to reimburse the Development Owner for costs incurred in connection with the development of the Development to the extent such costs are properly submitted to the Department in accordance with the procedures set forth in this Article IV and all other terms and conditions of this Agreement. The Development Owner may not request a disbursement of Exchange Program Funds from the Department until such funds are needed to pay costs of the Development. Accordingly, the amount of each Draw Request must be limited to the amount of money needed to pay costs actually incurred by the Development Owner at the time of the Draw Request and may not include amounts for prospective or future needs, or placed into escrow accounts or advanced in lump sums to the Development Owner.

B. Draw Requests shall be submitted for approval to the Asset Manager together with the completed and signed documents listed in Exhibit D, each in form and substance reasonably satisfactory to the Asset Manager (the "Draw Documents"). The Asset Manager may withhold any draw pending completion of a site inspection as deemed necessary by the Asset Manager or the Department to ensure that construction progress is being made in accordance with the Construction Documents.

C. The Department shall submit a request for Exchange Program Funds to the Treasury in an amount equal to the approved amount of the current Draw Request (not to exceed, in the aggregate, the amount of the Subaward) within five (5) Business Days of the later to occur of (i) approval of the draw request by Asset Manager or (ii) receipt by the Asset Manager of all of the completed and signed Draw Documents.

D. The Development Owner shall cooperate with the Asset Manager in obtaining and providing any additional documentation that may be required by the Treasury to approve the request for Exchange Program Funds.

E. The Development Owner acknowledges and agrees that no Exchange Program Funds may be disbursed after the Expiration Date; *provided, however*, that the Expiration Date may be extended in the discretion of the Department if, and only to the extent that, the expiration date for funding subawards of Exchange Program Funds set forth in Section 1602(d) of the Recovery Act is extended beyond December 31, 2011. All Draw Requests shall be submitted to the Asset Manager at least sixty (60) Business Days prior to the Expiration Date.

F. The Department will not make any payments to the Development Owner for costs that:

- (i) are prohibited under Program Requirements;
- (ii) are not in accordance with the terms of this Agreement;
- (iii) were requested and/or incurred after termination of this Agreement;
- (iv) were requested during the occurrence and continuation of an Event of Default; or
- (v) were requested and/or incurred less than sixty (60) Business Days prior to the Expiration Date.

G. Upon prior written notice to the Development Owner, the Department is authorized to make modifications to the disbursement procedures and Disbursement Agreement set forth herein to establish additional requirements for payment of the Subaward to the Development Owner as may be necessary or advisable for compliance with all Program Requirements.

H. The closing conditions set forth in Sections 3.1 and 3.2 shall be a pre-condition to any disbursement of funds pursuant to this Agreement.

Section 4.2 Disbursements of Exchange Program Funds to Development Owner

A. In a timely manner after the receipt of the Exchange Program Funds by the Department from Treasury, the Department shall disburse such funds to the Development Owner. Such funds shall be disbursed in accordance with the Disbursement Agreement.

B. The Disbursement Agreement shall provide the guidance for and shall take into account all applicable state payment laws, including but not limited to Chapters 403, 2107 and 2252 of the Texas Government Code, and any applicable federal payment laws.

C. The Department will not disburse any Exchange Funds to the Development Owner unless the Development Owner is current on submission of each and every required report including any required reporting under the Recovery Act as described in this Agreement.

Section 4.3 Draw Requests and Change Orders

A. The Development Owner expects to submit Draw Requests to the Asset Manager for disbursements of Exchange Program Funds on a monthly basis, or less frequently as necessary. Subject to the terms of the Disbursement Agreement, any expenditure which, when added to any prior expenditure, exceeds the Budget or any line item specified in the Budget, shall require the approval of the Asset Manager, which approval shall not be unreasonably withheld.

B. The Development Owner shall obtain the prior written consent of the Department for any Material Change Order, regardless of whether any proposed disbursement of Exchange Program Funds would be affected by such Material Change Order. As a precondition to the Department's consent to any Material Change Order, the Development Owner shall submit to the Department (with a copy to the Asset Manager) a description of the curative actions to be taken by the Developer and the Contractor to accelerate construction progress and/or align the sources and uses of funds for the Development notwithstanding such Material Change Order (the "**Action Plan**"). The Action Plan shall be in form and substance reasonably satisfactory to the Department and shall be signed by the Developer and the Development Owner as evidence of their intent to implement or cause to be implemented the Action Plan as described. Failure of the Development Owner to submit and/or cause implementation of an Action Plan reasonably acceptable to the Department shall entitle the Department to suspend making disbursements of Exchange Program Funds under this Agreement until such time as an acceptable Action Plan has been received and implementation thereof has commenced.

C. The Department will not approve any Material Change Order which would, in the reasonable determination of the Department, (i) cause the Development to fail to meet the Required In-Service Date, (ii) be in violation of state or federal law, or (iii) prevent the Subaward from being fully disbursed in a timely manner to the Development Owner in accordance with the requirements and procedures set forth herein by the Expiration Date.

Section 4.4 Construction Meetings; Monitoring

A. The Asset Manager shall have the right to participate in construction progress meetings and monitor the Development's construction until the Construction Completion Date in accordance with the terms of the Disbursement Agreement.

Section 4.5 Development Expenditures

A. The proceeds of the Subaward must be used to pay costs that have been incurred. The Asset Manager shall determine the Development Owner's compliance with this requirement based upon a review of the draw documents. The Department may establish such additional limitations on the expenditure of Exchange Program Funds as it determines are necessary to ensure compliance with Program Requirements.

B. In the event that the Department determines that the proceeds of the Subaward have been used to pay non-incurred costs, the Department shall provide the Development Owner with written notice thereof and the Development Owner shall pay to the Department, in immediately available funds within twenty (20) Business Days from the date of said notice, an amount equal to that portion of the Subaward used to pay non-incurred costs.

Section 4.6 Developer Fee Payments

A. The Developer shall be entitled to receive the Developer Fee in an amount set forth in the Budget, not to exceed the limits identified in the QAP.

B. Up to seventy-five percent (75%) of the Developer Fee may be disbursed in accordance with the percentage of construction completion of the Development. The balance of the Developer Fee may be paid upon the later to occur of (i) the Department's receipt and acceptance of Cost Certification in form and substance satisfactory to the Department, or (ii) the reasonable determination by the Department that there are sufficient sources of funds available after payment of all other Development Costs to pay the balance of the Developer Fee (unless, in each case, the Development Agreement or the Mortgage Loan Documents provide for later payment).

ARTICLE V
COVENANTS AND RESTRICTIONS

Section 5.1 Land Use Restriction Agreement (LURA)

A. The Development Owner and the Department shall enter into the LURA substantially in the form attached hereto as **Exhibit E** and deliver a copy executed and acknowledged by Development Owner to Closing in a recordable form. The terms and conditions of the LURA are incorporated herein by reference.

Section 5.2 Compliance with Program Requirements

A. The Development Owner will comply with all of the Program Requirements applicable to the Development throughout the Compliance Period and the Extended Use Period.

B. The Development Owner will comply with all of the requirements of Section 42 of the Code and Texas Government Code Chapter 2306 to the extent necessary to receive and maintain a subaward of Exchange Program Funds.

C. The Development Owner will maintain the Required Percentage throughout the Compliance Period and the Extended Use Period.

D. The Development Owner will comply with the income and rent restrictions and maintain the “applicable fraction” as set forth in the LURA throughout the term of the LURA.

E. No later than the date outlined in **Exhibit K** of this Agreement, the Development Owner shall have a basis in the Development that is no less than ten percent (10%) of its “reasonably expected basis in such project” as of the Required Placed In-Service Date for purposes of Section 42(h)(1)(E)(ii) of the Code. The Department will ascertain and require documentation of compliance with this requirement in the same fashion as it does with respect to projects receiving carryover allocations of Tax Credits.

F. Each building in the Development which is required to contain Low-Income Units will be placed in service by the Required Placed In-Service Date.

G. The Development will become a “qualified low-income housing project” (as defined in Section 42(g)(1) of the Code).

Section 5.3 Covenants Regarding Sale or Assignment of Development, Contracts or Interests

A. Other than in connection with the Mortgage Loans, the Development Owner shall not sell, lease, encumber (other than by residential or commercial leases in the ordinary course of business), transfer or otherwise dispose of any material portion of the Development, without the prior written consent of the Department, which consent shall not be unreasonably withheld. Any such transfer shall be subject to the requirements set forth in the QAP and the Department’s rules.

B. The Development Owner shall execute and deliver the Option Agreement in the form provided by the Department.

C. The Development Owner shall not, without the prior written consent of the Department, permit any material change in the ownership interests in the Development Owner, which consent shall not be unreasonably withheld. Any such transfer shall be subject to the requirements set forth in the QAP and the Department’s rules.

D. Without the prior written consent of the Department, which consent shall not be unreasonably withheld, the Development Owner shall not:

- (i) designate a new Property Manager;
- (ii) designate a new Contractor;

(iii) designate a new Developer; or

(iii) make any assignment of, or material change in, the Property Management Agreement, the Development Agreement or the Construction Contract.

E. The Development Owner shall ensure that the following rights of the Department are included in the Mortgage Loan Documents, as applicable and the Development Owner's organizational documents:

(i) The Department shall have the right to replace the General Partner and/or Property Manager of the Development in the event that there is an Event of Default or the Development becomes in Material Non-Compliance as such term is defined in 10 TAC Chapter 60.

(ii) The Department shall have the right to approve any new General Partner and/or Property Manager selected by Development Owner, the Lender, and/or the other partners of the Development Owner, which approval shall not be unreasonably withheld.

F. The Department shall, in any partnership agreement or limited liability company management agreement, be allowed to (i) replace, in consultation with the other partners, the General Partner, (ii) approve the selection of a new General Partner and to (iii) have an Option to purchase of up to 20% of the partnership interests in the event of the sale of the Development as this Option shall be evidenced in writing in a separate Option Agreement provided by the Department.

Section 5.4 Miscellaneous Covenants

A. The Development Owner shall deliver to the Department and the Asset Manager a copy of any state and federal filings, and notices of change in ownership that is required to be delivered to the Securities and Exchange Commission.

ARTICLE VI **RECAPTURE**

Section 6.1 Recapture Event

A. A "**Recapture Event**" shall be deemed to occur if, at any time prior to the end of the Compliance Period, any one or more of the following events shall occur and remain uncured as provided in Section 6.4 below;

(i) the Development Owner does not comply with section 5.2E or Section 5.2F of this Agreement;

(ii) the percentage of Low-Income Units in the Development falls below the Minimum Set-Aside;

(iii) the Development ceases to be a "qualified low-income housing project" (as defined in Section 42(g)(1) of the Code);

(iv) 100% of the Exchange Program Funds available or advanced to the Development Owner have not been expended by the later of either, December 31, 2011, or a date approved by the Treasury;

(v) Exchange Program Funds have been determined by the Department or the Treasury to have been expended for non-Eligible Costs in violation of Program Requirements and have not been repaid in accordance with the terms of this Agreement;

(vi) If under the then current rules for Tax Credit properties under 10 TAC Chapter 60 the Department sends notice to the IRS that the Development is no longer participating in the program;

B. If a Recapture Event shall occur, the applicable portion of the Subaward disbursed to the Development Owner shall be subject to "recapture" in the amounts set forth below (the "**Recapture Amount**").

(i) If the Recapture Event arises under Section 6.1A(ii), (iii) or (vi) above, after allowing any permitted period for cure of correction, the Recapture Amount shall be equal to the full amount of the Subaward, less 6.67% for each full calendar year of the Compliance Period in which a Recapture Event has not occurred; provided, however, that if the Development Owner restores (a) the percentage of Low-Income Units to the Required Percentage and/or (b) the Development as a "qualified low-income housing project," as applicable, the Recapture Event and any Recapture Amount shall be waived by the Department with respect to subsequent years in the Compliance Period in which the Development is in compliance, provided that such waiver is permitted under the Program Requirements.

(ii) If the Recapture Event arises under Section 6.1A(i) above, the Recapture Amount shall be an amount equal to the amount of the Exchange Program Funds actually disbursed to the Development Owner under the terms of this Agreement.

(iii) If the Recapture Event arises under Section 6.1A(iv) or (v) above, the Recapture Amount shall be an amount equal to the amount of the Subaward determined by the Department, in its reasonable discretion, not to have been expended by December 31, 2011 or to have been expended for non-Eligible Costs in violation of Program Requirements, as applicable.

C. In the event of any Recapture Event set forth above, the Recapture Amount shall include any interest or penalties that accrue in accordance with the Program Requirements.

D. If a Recapture Event occurs, in addition to the Recapture Amount, the Development Owner shall pay to the Department upon demand an amount equal to the reasonable out-of-pocket costs and fees reasonably incurred by the Department in connection with the Recapture Event.

Section 6.2 Enforcement

A. The Recapture Amount shall be due and payable to the General Fund of Treasury and shall be deemed a debt owed to the Treasury, enforceable against any assets of the Development Owner by Treasury. Such debt shall be secured and enforceable by the lien of the Recapture Mortgage in favor of the Treasury, which lien may be enforced by the Department on behalf of the Treasury; provided, however, that upon any foreclosure of the lien of the Recapture Mortgage, the Department may bid the lien amount on behalf of the Treasury and may take title to the Development in its own name, to be held for the benefit of the Treasury, subject to the terms of any senior Mortgage Loan Documents and the Subordination Agreement.

B. The Recapture Mortgage imposed hereunder shall be filed and recorded in the real property records of the county in which the Development is situated, as designated by the laws of the State.

C. Unless another date is specifically fixed by law, the amount due shall be reduced to judgment and filed in the property Real Property Records of the county in which the Development is located and shall continue in force until the Recapture Amount is paid to the Department in full.

D. If the Department determines it to be in the best interests of current and prospective occupants of the Low-Income Units of the Development, and if permitted under the Program Requirements, the Department may delay foreclosure or other enforcement of any Recapture Mortgage or obligation until the end of the Compliance Period.

E. The Department may defer the enforcement of remedies upon the occurrence of a Recapture Event until the end of the Compliance Period, if it determines that the Lender is taking appropriate measures to correct the circumstances giving rise to the Recapture Event.

F. To the extent permitted under applicable law, the Subordination Agreement and the Mortgage Loan Documents governing any liens that are senior to the Recapture Mortgage, the Department may utilize any and all reasonable means and efforts to recapture funds under the Recapture Mortgage up to and including foreclosure and taking ownership of the Development.

Section 6.3 Notice of Recapture Event

The Department or the Asset Manager, as applicable, shall provide the Development Owner and the Developer with written notice in accordance with Section 12.1 of any Recapture Event or of any circumstances which, with the passage of time, would give rise to a Recapture Event, of which, in either event, it shall become aware. Upon the giving of any such notice to the Development Owner, the Developer and the Lender, the Department or the Asset Manager, as applicable, shall also provide copies of any such notice(s) to the Lender. The failure of the Department or the Asset Manager, as applicable, to provide notice as herein required shall not relieve the Development Owner of any obligation hereunder or the LURA, or prevent the occurrence of a Recapture Event, nor shall it serve to relieve the Development Owner of any of the consequences thereof.

Section 6.4 Right to Cure

The Development Owner shall have the right to cure a Recapture Event within a reasonable period of time after the Development Owner and the Lender have received Notice of the circumstances giving rise to such Recapture Event or after the Development Owner would have become aware of the circumstances giving rise to such Recapture Event had the Development Owner exercised reasonable diligence with respect thereto. The Department, acting in good faith and using reasonable judgment, shall have the right to determine what constitutes "a reasonable period of time" and whether a cure has been properly and timely effected for purposes of this Section, except to the extent that such determinations are governed by or otherwise prescribed or delimited by Program Requirements. Any cure made or tendered by the Developer or any Lender shall be accepted or rejected on the same basis as a cure made directly by the Development Owner, to the extent not inconsistent with Program Requirements.

Section 6.5 Preservation of Rights and Remedies

Any action under this Article VI will not limit or deprive the Department or Treasury from exercising any other rights and remedies that they have under law or equity, or any rights and remedies provided herein with respect to Events of Default.

Section 6.6 Third-Party Rights

- A. Treasury shall be deemed a third-party beneficiary of this Article VI.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 7.1 Representations and Warranties of the Development Owner

A. The Development Owner hereby represents and warrants to the Department that the following are true as of the date hereof and will be true on the due date of each disbursement of Exchange Program Funds, and, as applicable, will be true throughout the Compliance Period and the Extended Use Period, where applicable:

B. The Development Owner is duly organized to conduct business and validly existing under the laws of the state of its organization, is qualified to conduct its business in the State, and has full power and authority to perform its obligations under this Agreement, and has, at a minimum, a registered agent on record in the State.

C. No litigation, demand, investigation, claim or proceeding against the Development Owner or any other litigation or proceeding directly affecting the Development is pending or, to the best knowledge of the Development Owner, threatened, before any court, administrative agency or other Governmental Authority that would, if adversely determined, have a material adverse effect on the Development Owner or the construction, use and operation of the Development.

D. No default by the Development Owner or any Affiliate thereof under any contractual relationship with the Development has occurred or is continuing (nor has there

occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) or under any of the Mortgage Loan Documents for the Development or other documents or instruments governing the development, use, occupancy and operation of the Development.

E. All material building, zoning, health, safety, business, and other applicable certificates, permits and licenses necessary to permit the construction, use, occupancy and operation of the Development have been or will, at the time required, be obtained and maintained (other than, prior to completion of construction of the Development or a specified portion thereof, such as are issuable only upon completion of construction or such specified portion thereof); and the Development Owner has not received any notice and has no knowledge of any violation with respect to the Development of any law, rule, regulation, order or decree of any Governmental Authority having jurisdiction which would have a material adverse effect on the Development or the construction, use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in the process of being cured, and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

F. The Development Owner has, or will have a fee interest in the Development and, with respect to the Development Site, either a fee interest or a long term ground lease for a period of not less than forty-five (45)-years, and has good and indefeasible title thereto, free and clear of any liens, charges or encumbrances other than the Mortgages, encumbrances the Development Owner is permitted to create under the terms of this Agreement, encumbrances set forth in any title commitment or title policy for the Development Site, and mechanics' or other liens that have been bonded against (or as to which other cash equivalent security has been provided) in such a manner as to preclude the holder of such lien from having any recourse to the Development or the Development Owner for payment of any debt secured thereby.

G. No Event of Default has occurred and is continuing.

H. No Event of Bankruptcy has occurred as to the Development Owner or the Developer.

I. The sources of funds available to the Development Owner are sufficient to enable the Development Owner to complete construction of the Development in accordance with the Plans and Specifications.

J. In the event that the Development Owner will be financing the acquisition of the Development Site, the Department may not, under the requirements applicable to the Exchange Program, provide such financing. Therefore, prior to the first Draw Request for Exchange Program Funds the Development Owner must certify that it has acquired the Development Site with funds from another source. Thereafter, the Department will provide funding as requested up to the total amount of the Subaward.

K. Each of the representations and disclosures made by the Development Owner to the Department in the application(s) for Tax Credits and/or Exchange Program Funds is true and correct as of the date hereof, or in the case of changed circumstances, such change has been

presented to and approved by the Department in writing. Each of the covenants, agreements and conditions contained in such applications have been duly performed or satisfied by the Development Owner to the extent that performance or satisfaction is required on or prior to the date hereof, and the Development Owner has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.

L. The LURA, which constitutes an "extended low-income housing commitment" as defined in Section 42(h)(6) of the Code, will be in effect as of the end of each taxable year in which the buildings in the Development are placed in service.

M. The Development as planned will constitute "residential rental property" within the meaning of Section 1.103-8(b)(4) of the Treasury Regulations.

N. No federal appropriated funds have been paid or will be paid, by or on behalf of the Development Owner, to any Person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

O. No funds have been paid for influencing or attempting to influence an office or employee of a Member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting the Development Owner. To the best knowledge of the Development Owner, the Development Owner has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal Entity in connection therewith, if applicable.

P. Neither the Development Owner nor any of its partners, members, officers, directors, or employees, nor, to the best knowledge of the Development Owner, any contractor or agent of the Development Owner nor any Affiliate of the Development Owner, nor any Person who or which directly or indirectly owns or Controls the Development Owner or any of its or their constituent Entities, nor any Person who or which directly or indirectly owns or Controls any Affiliate of the Development Owner or any of its constituent Entities, nor any Person who or which directly or indirectly holds a substantial (i.e., ten percent (10%) or more) equity interest in the Development Owner or in any of its constituent Entities or in any Affiliate of the Development Owner or any of its or their constituent Entities (collectively, "**Development Owner Parties**"), is a Barred Person or has ever been a Barred Person (as hereinafter defined). "Barred Person" means any Person with whom a U.S. Person is barred from transacting business under U.S. law, including but not limited to (i) Persons identified as specially designated terrorists, narcotics traffickers, or blocked persons by the U.S. Government on the "Specially Designated Nationals and Blocked Persons List" maintained by the U.S. Treasury Department; and (ii) Persons that are citizens of or organized or domiciled or resident in countries subject to U.S. economic embargo restrictions and thereby barred from transactions with U.S. Persons. "U.S. Person" means a Person, that is a citizen of or organized or domiciled

or resident in the United States. "Owned or controlled" and variations thereof mean a direct or indirect interest in the entity in question, including but not limited to voting or non-voting equity, partnership, joint venture and other arrangements, and specifically including but not limited to (1) all members of limited liability companies, (2) all shareholders owning ten percent (10%) or more of the outstanding shares of corporations, measured on an aggregate and/or class-by-class basis, (3) all general partners of limited partnerships and general partnerships, (4) all limited partners owning twenty-five percent (25%) or more of the outstanding limited partnership interests in limited partnerships, (5) all trustees and settlors of trusts, and (6) all beneficiaries owning twenty-five percent (25%) or more of the beneficial interests in trusts.

Q. Neither any General Partner nor any other Development Owner Party nor any of the Development Owner's property is or has ever been subject to or a party to or bound by any agreement or other arrangement with any Barred Person.

R. The Development Owner and all other applicable Development Owner Parties have not engaged and shall not engage in any act or omission that would violate anti-money-laundering laws, including but not limited to 18 USC § 1956; have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USC § 5318(h) and applicable to all "financial institutions" as defined in 31 USC § 5312(a)(2); and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report Suspicious Transactions to relevant U.S. Government officials. "Suspicious Transactions" that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 6050I; (ii) any transaction where the Development Owner or any Development Owner Party knows, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose.

Section 7.2 Covenants

The Development Owner unconditionally covenants and warrants that:

A. The Development Owner shall cause the Construction Completion Date to occur within twenty-four (24) months from the date of Closing, but in no event later than the Required Placed In-Service Date. The Development Owner shall satisfy all construction-related requirements of the Mortgage Loans, including any requirement related to completion of the Development. The Development Owner shall pay all costs to complete construction of the Development in accordance with the Plans and Specifications when and as incurred, regardless of whether such costs exceed the amounts anticipated for such items in the Budget or the sources otherwise available to pay such costs (in either such event, said costs being referred to as "**Excess Development Costs**"). The Development Owner shall pay any Excess Development Costs by the earliest of (i) the date required to avoid a default or penalties under the Mortgage Loans, (ii) the date required to keep all sources of funding for the Development

“in balance,” (iii) the date required to keep all expenses without a specific maturity date paid on a sixty (60)-day current basis, or (iv) such earlier date as may be set forth in this Agreement.

B. As of the date of Closing, all reserves and accounts required to be maintained by the Development Owner under the terms of this Agreement are currently funded (or will be funded at the time(s) required) up to the specified levels.

C. Construction of the Development will commence prior to the date outlined in **Exhibit K**, the Fifty Percent Construction Completion Date will occur within eight (8) months from Closing, and the Construction Completion Date will occur within (24) twenty-four months from Closing, but in no event later than the Required In-Service Date.

D. The Development Owner will Construct and operate the Development in accordance with the terms of the LURA.

E. If the Development Site is comprised of multiple parcels, either (a) all such parcels are contiguous (that is their boundaries meet at one or more points), except for the interposition of a road, street, stream or similar boundary, or (b) 100% of the units will be Low-Income Units.

F. All utilities are, or will be, available to the Development, including sanitary and storm sewers, water, gas (if applicable) and electricity.

G. The Development will continue to be owned and operated by the Development Owner through the Compliance Period and the Extended Use Period or, if later, the date (if any) through which the Development Owner is required to own and operate the Development pursuant to any of the documents governing the use and operation of the Development, unless the Department consents to a change of ownership in accordance with its rules and procedures.

H. The Development will be operated so that it will meet (and an appropriate election has been or will be made with respect to) the Minimum Set-Aside Test as of the dates established by Section 42(g)(3) of the Code and at all times thereafter through the end of the Compliance Period and the Extended Use Period.

I. The Development Owner will comply with all applicable provisions of Texas Government Code Chapter 2306 and its supplementing rules.

J. The Development will, at all time throughout the Compliance and Extended Use Periods, comply with the LURA.

K. The Development Owner will follow applicable Program Requirements and Section 42 of the Code with respect to obtaining annual reports from tenants of Low-Income Units of the Development concerning their incomes and family sizes. Except to the extent permitted by Section 42(g)(2)(E) of the Code, the gross rents (as adjusted in accordance with Section 42(g)(2)(B) of the Code) charged for each of the Low-Income Units will not, at any time during the Compliance Period and the Extended Use Period, exceed 30% of the income limitation applicable to the tenants of each such unit for purposes of the Minimum Set-Aside Test and Section 7.2I above.

L. The Development will be operated so that the number of units as specified in the LURA will qualify as Low-Income Units at all times during the Compliance Period and the Extended Use Period, which is the “applicable fraction” required for purposes of the LURA. The proration of units required to comply as Low Income Units is outlined in **Exhibit K**.

M. None of the Low-Income Units will be occupied entirely by “students” (except as permitted by the Code).

N. All services provided to tenants will be consistent with the LURA and, will be optional if not free to the residents (i.e., payment for the service will not be required as a condition of occupancy) and there will be no charges for services that are not optional (i.e., mandatory services) will be provided, or if so provided, the charges for any such services shall be included in determining compliance with the applicable rent restriction for purposes of Section 7.11.

O. Tenants for the units will be screened and selected from a pool of eligible tenants based on uniformly applied tenant selection criteria that are commonly employed by other property owners in determining tenant eligibility in projects similar to the Development, and:

(i) no preferences or discrimination will be employed in selecting tenants that violates or is inconsistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations;

(ii) units in the Development will be available for use by the general public within the meaning of Section 1.42-9 of the Treasury Regulations and Section 42(g)(9) of the Code; and

(iii) The units will be rented on a non-transient basis except in accordance with the Code and Revenue Procedure 2007-54.

P. The tenant facilities of the Development included in Eligible Basis will be available to all tenants on a comparable basis without separate fees.

Q. At least one unit in each building in the Development will be ready and available for occupancy in accordance with State and local laws on or before the Required In-Service Date.

R. The LURA, which constitutes an “extended low-income housing commitment” as defined in Section 42(h)(6) of the Code, will be in effect as of the end of each taxable year in which the buildings in the Development are placed in service.

S. The Development Owner will develop and operate the Development in accordance with (i) the applicable provisions of Section 42 of the Code, (ii) the terms of this Agreement, (iii) the Program Requirements, (iv) all applicable federal, state, and local statutes, rules and regulations with respect to the Development including, without limitation, the Fair Housing Act (42 U.S.C. 3601, et seq.), as amended, and (v) all applicable requirements of any Governmental Authority having jurisdiction over the Development.

T. In the event the Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder, including without limitation, 54 CFR 4956 (1989), as amended such Act and regulations are applicable, the Development Owner has complied with and will continue to comply with such Act.

U. The Development Owner and each other Development Owner Party will prevent, and have instituted or will institute (and will update from time to time to correspond to changes in circumstances and changes in applicable laws and regulations) policies and procedures to prevent, any circumstance or event described in Section 7.2K and Section 7.2L above.

V. From the Closing Date until the termination of the LURA, the Development Owner shall maintain insurance coverage (from an insurance carrier rated within at least the top three rating categories of the relevant rating agency) in amounts sufficient to assure the ongoing ability of the Development Owner to perform its duties under the terms and conditions established by the LURA or the full repayment of the Subaward including, but not limited to if other coverage is needed to provide such assurances: Builders Risk/Construction Insurance, Casualty Loss Insurance, Flood Insurance (if applicable), Business/Rent Loss Insurance and Liability Insurance (including personal injury, bodily insurance, death, accident and property damage). Borrower shall cause its insurance carrier to give the Department a copy of the existing policy and provide 30 day notice prior to cancellation, termination, or failure to renew the policy. In the event of cancellation for failure to pay premiums the insurance carrier should agree to provide 10 day notice to the Department. Development Owner hereby provides the right for Department to directly contact its insurance carrier about the coverage and policies in place without imposing any obligation or liability on the Department. Department shall be listed as an additional insured on any and all policies purchased on the Development. In the event of an insured event occurring, the first priority is to maintain the Development in its original condition to perform all functions required under the LURA. Should that not be possible, proceeds will be distributed based on the Subordination Agreement and any subordination agreement in place at the time of the insured event.

Section 7.3 Cost Certification

A. The Development Owner shall provide a full accounting of funds expended under the terms of this Agreement as part of Cost Certification on the earlier of January 13, 2012 or sixty (60) days of Construction Completion. In addition to the remedies available to the Department under Section 11.2 of this Agreement with respect to an Event of Default, failure of the Development Owner to provide a full accounting in accordance with the QAP and the Department's Cost Certification Procedures Manual shall be sufficient reason for the Department to make the Development Owner or its Affiliates ineligible to apply for assistance under TDHCA programs or subject to penalty in accordance with TDHCA rules. The Development Owner, in providing such accounting, represents and warrants to and covenants with the Department that the entirety of Exchange Funds disbursed hereunder have been for items that are Eligible Costs and that if any Exchange Funds were disbursed for items other than Eligible Costs, they will be returned in accordance with this Agreement.

ARTICLE VIII
RESERVE ACCOUNTS

Section 8.1 Replacement Reserve

A. The Development Owner shall establish a reserve account in a manner and with an Entity approved by the Department for capital replacements, which account shall be funded consistent with the Budget as outlined in **Exhibit B** and/or Texas Government Code Sections 2306.185 and 2306.186 with the regard to the amount per unit per year (or such greater amount as may be required by any Lender) commencing on the Construction Completion Date. Withdrawals from such reserve shall be utilized solely to fund capital repairs and improvements deemed necessary by the Development Owner. Any withdrawal of funds from the replacement reserve which would cause the aggregate withdrawals in any one calendar quarter to exceed \$10,000 shall be subject to the prior written consent of the Asset Manager.

Section 8.2 Operating Lease-Up Reserve

The Development Owner shall establish a reserve account in a manner and with an Entity approved by the Department for operating deficits in an amount equivalent to six months of stabilized operational expenses and debt service payments. Such funds must be funded with the lesser of fifty percent (50%) of the gross rental income during lease-up or the net operating cash during lease-up. This reserve shall be maintained as a segregated account in the name of the Development Owner. Withdrawals from such reserve account shall be allowed as approved by the Department to fund cash deficits prior to stabilization. Once six months of continuous stabilized occupancy (90% physical) has been achieved withdrawals from this fund may be made by the Development Owner without consent of the Department.

Section 8.3 Special Reserve Account

In the event that any net cash flow is generated by the Development in any given Fiscal Year during the Compliance Period or the Extended Use Period, then after assuring that the reserves required by Sections 8.1 and 8.2 are fully funded, the participation percentage of such net cash flow shall be placed in a special reserve account to assist residents to provide assistance with expenses associated with their tenancy. Resident expenses that may be paid from such special reserve account include application costs, security deposits or utilities for any unit leased to residents with incomes at or below 50% of the area median family income, or other purposes as approved by the Department. The level of special reserve account participation is outlined in **Exhibit K**. The Department shall have prior approval rights for any disbursement of funds from such account, which approval shall not be unreasonably withheld.

Section 8.4 Funding of Reserve Accounts

The reserve accounts required hereunder except for the Replacement Reserve account outlined in Section 8.1, shall not be funded with Exchange Program Funds; provided, however, that to the extent that amounts have been disbursed to the Development Owner or the Developer in payment of fees or for reimbursements of previously paid expenditures, such amounts may be used to fund reserve accounts as permitted by the Department and unless otherwise prohibited by Program Requirements. In any event, the reserve accounts required hereunder shall not be

considered an eligible cost for basis calculation in determining the eligible amount of Exchange Program Funds

ARTICLE IX
BOOKS AND REPORTING

Section 9.1 **Financial Status Reports**

A. The Development Owner shall maintain or cause to be maintained for the term of this Agreement a complete and accurate set of books and supporting documentation of transactions with respect to the conduct of the Development Owner's business. The Department and its duly authorized representatives (including its Asset Manager) shall have the right to examine the books of the Development Owner and all other records and information concerning the operation of the Development from time to time with reasonable prior notice during regular business hours provided that such examination shall not unreasonably disrupt or interfere with the Development Owner's business or operations.

B. Beginning with the first Fiscal Quarter after the later of Closing or the Construction Completion Date, the Development Owner shall send to the Asset Manager no later than fifteen (15) Business Days following the close of each Fiscal Quarter the following information (which need not be audited): (i) a balance sheet as of the end of the applicable Fiscal Quarter, (ii) a statement of income for the applicable Fiscal Quarter, (iii) a statement of cash flow, (iv) a quarterly financial summary in a form attached hereto as **Exhibit G**; (collectively, the "**Quarterly Financial Status Reports**"). If the Quarterly Financial Status Reports are not delivered to the Asset Manager when due hereunder, then the Development Owner shall be obligated to pay to the Department or its duly authorized representatives (as the agent and representative of the Department) an amount equal to \$100 per day for each day after the due date until such Quarterly Financial Status Reports are delivered. Failure to deliver the Quarterly Financial Status Reports when due hereunder may also result in the suspension of any disbursements of Exchange Program Funds hereunder and/or give rise to a Recapture Event, unless waived by the Department.

C. The Development Owner shall prepare or cause to be prepared balance sheets as of the end of each Fiscal Year and financial statements for such Fiscal Year which are accompanied by the opinion of a third-party accountant that said balance sheets and statements have been prepared in accordance with generally accepted accounting principles applied consistently with prior periods, identifying any matters to which such accountant takes exception and stating, to the extent practicable, the effect of each such exception on such financial statements (the "**Accountant's Opinion**"). As a note to such financial statements, the Development Owner shall prepare (or shall cause to be prepared) a schedule of all loans to the Development Owner, setting forth the purpose(s) for which the proceeds of such loan were applied by the Development Owner and such schedule will be reviewed by the third-party accountant. The Development Owner shall transmit to the Asset Manager a copy of the final financial statements (with the Accountant's Opinion) within thirty (30) calendar days from completion of the audit, but in no event later than the first Business Day following one hundred fifty (150) calendar days after the end of each such Fiscal Year. If the final financial statements (with the Accountant's Opinion) are not delivered to the Asset Manager when due hereunder,

then the Development Owner shall be obligated to pay to the Department or its duly authorized representatives (as the agent and representative of the Department) an amount equal to \$100 per day for each day after the due date until such statements are delivered, unless waived by the Department.

D. The Development Owner shall prepare and furnish to the Asset Manager an estimate of the profits and losses of the Development Owner for federal income tax purposes for the current Fiscal Year not later than September 30 of each year.

E. The Development Owner shall submit to the Department or its duly authorized representatives any other reports and information that the Department reasonably deems necessary to comply with Section 1602 of the Recovery Act and Program Requirements, as the same may be amended from time to time.

F. In the event that the Development Owner fails to submit to the Department or its duly authorized representatives in a timely and satisfactory manner any report required by this Agreement, the Department may, in its sole discretion, withhold any or all payments otherwise due or requested by the Development Owner hereunder until such time as the Development Owner fully cures or performs any and all delinquent reporting obligations.

Section 9.2 Compliance Monitoring Reports

A. No later than six (6) months before initial occupancy of the dwelling units is scheduled to begin, the Development Owner shall supply the Asset Manager with a management and marketing plan (the "**Marketing Plan**") for the Development. The Marketing Plan will describe (i) the level of on-site staff to be employed at the Development, with a brief job description for each person, (ii) the type, frequency, media, approximate cost, and timetable, of advertising for the Development, (iii) a brief survey of properties in the vicinity which may be perceived as comparable, and their current rents, and (iv) a timetable of pre-opening marketing activities as well as expected lease-up. The Marketing Plan must be acceptable to the Asset Manager, which acceptance may not be unreasonably withheld.

B. Until such time as one hundred percent (100%) of the Low-Income Units in the Development have been leased and occupied by Qualified Tenants, the Development Owner shall supply the Asset Manager with the following items:

(i) monthly leasing reports, showing the number of applications taken away by prospective tenants, the number submitted, the number being evaluated and the number accepted since the date of the last report;

(ii) a monthly Section 42 Compliance Form in the form attached hereto as **Exhibit F**;

(iii) as soon as they become available, Tenant Income Certification files for the initial tenants in the first five (5) Low-Income Units in the Development; and

(iv) upon completion of lease-up of the Low-Income Units in the Development, Tenant Income Certification files for all initial tenants in all the Low-Income Units in the Development.

Thereafter, the Development Owner shall supply the Asset Manager, within ten (10) business days after the end of each Fiscal Quarter, a Section 42 Compliance Form in the form attached hereto as **Exhibit F**.

C. The Development Owner shall submit to the Asset Manager any other compliance reports that the Department reasonably deems necessary to comply with Program Requirements.

D. The Department reserves the right to carryout regular and periodic field inspections to ensure compliance with Program Requirements and the requirements of this Agreement.

Section 9.3 Quarterly Progress Reports

No later than five (5) Business Days following the end of each calendar quarter, commencing with the date hereof, the Development Owner shall complete the "Quarterly Progress Report" in the form attached hereto as **Exhibit H** and submit such report to the Department.

ARTICLE X **ASSET MANAGEMENT**

Section 10.1 Appointment of Asset Manager

A. The Department shall be the initial Asset Manger of the Development, unless a third party Asset Manager has been designated by the Department upon the execution of this Agreement.

B. The Department may appoint in writing a third-party Asset Manager to perform its Asset Management duties hereunder by giving written notice to the Development Owner.

Section 10.2 Asset Management Duties

A. The Development Owner will be subject to Asset Management oversight, which may include the following:

(i) review the use of the proceeds of the Subaward to ensure such proceeds are being spent in accordance with the requirements of this Agreement, in particular and without limitation, Article IV hereof, and with Program Requirements;

(ii) review and report to the Department no less than quarterly on the progress of construction of the Development, its compliance with the Construction Schedule, the Plans and Specifications, and the Budget, and any Change Orders, changes to anticipated sources and uses, or other matters which, in the judgment of the Asset Manager, may

adversely affect the ability of the Development Owner to complete construction of the Development;

(iii) review all financial status reports required to be delivered pursuant to Article IX of this Agreement;

(iv) review all compliance monitoring reports required to be delivered pursuant to Section 9.2 of this Agreement; and

(v) review reports required to be delivered pursuant to Article IX of this Agreement and consult with the Development Owner as to such measures as may be necessary or desirable to remedy any unfavorable compliance or financial circumstances concerning the Development.

B. The Asset Manager may, and upon the direction of and following consultation with the Department shall, take such of the following actions with respect to the Development as it and/or the Department shall reasonably deem advisable:

(i) declare that an Event of Default has occurred hereunder, specifying the nature of said Event of Default;

(ii) exercise any of the remedies provided to the Department pursuant to this Agreement with respect to an Event of Default;

(iii) recommend (I) that further disbursements of Exchange Program Funds be delayed, suspended or terminated, (II) that the Developer, the Property Manager, the Contractor or any other party providing services to the Development Owner be replaced, (III) any appropriate measures to assure that the Fifty Percent Construction Completion Date and the Construction Completion Date can each be achieved within the applicable time period and available resources, or (IV) such measures as may be needed to address instances of noncompliance with Program Requirements, the LURA, or the requirements of this Agreement; and

(iv) declare that a Recapture Event has occurred or that circumstances exist which may give rise to a Recapture Event, together with making such suggestions for remediation as the Asset Manager deems appropriate.

Section 10.3 Asset Management Fee

A. In consideration of the services and obligations of the Asset Manager hereunder, the Development Owner hereby agrees to pay to the Department an annual fee (the "Asset Management Fee") reasonably adjusted from time to time by the Department. The Asset Management Fee shall be an operating expense of the Development Owner and must be included in the annual pro forma operating budgets for the Development. The Asset Management Fee may be changed by the Department on thirty (30) days' prior written notice if necessary to cover any projected or actual increase in costs to the Department attributable to the performance of its asset management duties hereunder.

B. The Asset Management Fee shall be payable annually commencing May 1, 2010 and due and payable every January 30th thereafter, or such other date as may be specified by the Department. Upon receipt of an invoice for the amount of Asset Management Fees (which may be quarterly or annually), the Development Owner shall have until the first Business Day following thirty (30) calendar days to remit payment to the Department.

ARTICLE XI
DEFAULT; TERMINATION

Section 11.1 Default

A. Any of the following events shall constitute an "**Event of Default**" under this Agreement:

(i) a breach by the Development Owner of any of its representations or warranties contained in this Agreement or in the performance of any of its obligations under this Agreement, in either event that (a) has or might reasonably be expected to have a material adverse impact on the operation of the Development, and (b) is not cured the first Business Day following thirty (30) calendar days (in the case of a monetary default) or the first Business Day following sixty (60) calendar days (in the case of a non-monetary default) following notice of such breach or default from the Asset Manager to the Development Owner and Developer *provided, however*, that if a non-monetary default cannot reasonably be cured by the first Business Day following sixty (60) calendar days and the Development Owner commences a cure within twenty (20) Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended to a date no later than the latest permissible date for correction of the applicable breach under the Program Requirements without causing a Recapture Event; or

(ii) the commencement of non-judicial foreclosure proceedings with respect to any Mortgage, which have not been withdrawn or dismissed by the first Business Day following thirty (30) calendar days from the date of such commencement or the commencement of any judicial foreclosure proceeding;

(iii) a violation of any law, regulation or order applicable to the Development Owner or the Development that has or might reasonably be expected to have a material adverse impact on the operation of the Development and is not cured within the applicable cure period, if any, provided in such law, regulation, or order, or prior to such adverse impact;

(iv) a default has occurred under the LURA, which is not cured within the time period for cure as provided therein; or

(v) gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity by the Development Owner or any Affiliate of the Development Owner providing services to or in connection with the Development Owner; or

(vi) the Construction Completion Date has been delayed by more than sixty (60) calendar days, and such is not due to Force Majeure, and the Development Owner has failed to submit an acceptable Action Plan to the Department in accordance with Section 4.3;

(vii) the Fifty Percent Construction Completion Date does not occur within eight (8) months of Closing, or such later time as may be approved by Department, and such is not due to Force Majeure;

(viii) Cost Certification does not occur within sixty (60) days from the Construction Completion Date;

(ix) repeated or prolonged failure to provide reports required by Article IX;

(x) a Recapture Event shall occur and the Recapture Amount due in connection therewith shall remain unpaid for a period of ten (10) Business Days after notice thereof from the Department or Treasury, unless a later date is specified in such notice or this Agreement; or

(xi) the Development Owner violates the covenants contained in Section 5.3 hereof.

(xii) if the Developer or Development Owner mortgages, hypothecates, grants lien upon, permits the placing of a lien upon, grants a security interest in or otherwise encumbers the Property or any portion thereof without the prior written consent of the Department.

Section 11.2 Remedies on Default

A. Subject to the terms and provisions of the Subordination Agreement, the Department shall have the right to exercise any of the following remedies during the existence of an Event of Default:

(i) temporarily suspend making payments of the Subaward under this Agreement pending correction of the Event of Default by the Development Owner;

(ii) cease making any further payments under this Agreement;

(iii) terminate this Agreement;

(iv) require that the Developer, the Property Manager, the Contractor or any other Person providing services to the Development Owner be replaced by another contractor chosen by the Development Owner and acceptable to the Department;

(v) removal of the General Partner of the Development Owner and provide for the Department or its designee, to act in its stead, pending appointment of a replacement General Partner under the organizational documents of the Development Owner;

(vi) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;

(vii) exercise any rights it may have under the Recapture Mortgage (in the event of a default under Section 11.1(x) above) and the Security Instruments, including foreclosure of the liens thereunder;

(viii) deny to the Development Owner and the principals of the Development Owner the right to participate in programs of the Department or impose penalties in accordance with the Department's rules; and

(ix) exercise any other rights and remedies that may be available under law or in equity.

B. In addition to the remedies described in Section 11.2A above, the Development Owner shall, upon demand by the Department during the existence of an Event of Default, repay any amount of Exchange Program Funds previously disbursed to the Development Owner under the terms of this Agreement.

C. The Department may defer the enforcement of remedies upon the occurrence of an Event of Default for such period as it determines appropriate, if it determines that the Lender, the Developer, the Development Owner, and/or any Affiliate thereof, is taking appropriate measures to correct the circumstances giving rise to the Event of Default.

D. The Board may, in its sole and absolute discretion, and within the limits of federal and State law, waive any one or more rights, remedies or requirements under this Agreement if it finds that waiver is appropriate to fulfill the purposes and policies of Chapter 2306 of the Texas Government Code, or for good cause as determined by the Board.

E. Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement, the Recapture Mortgage, the Security Agreements, or the LURA, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

Section 11.3 Third-Party Rights to Notice and Cure

A. The Department shall provide the Developer and the Lender with copies of any written notice of default provided to the Development Owner pursuant to the terms of this Article XI. The Department hereby agrees that any cure of any default made or tendered by the Developer or a Lender shall be deemed to be a cure by the Development Owner and shall be accepted or rejected on the same basis as if such cure were made or tendered by the Development Owner. All terms of this Agreement shall be subject to the terms and provisions of the Subordination Agreement.

Section 11.4 Enforcement of Provisions

A. The Development Owner acknowledges that one of the primary purposes for requiring compliance with the provisions of this Agreement is to assure compliance by the Development and Development Owner with Section 42 of the Code and the other Program Requirements. In consideration for receiving the Exchange Program Funds, the Development Owner hereby agrees and consents that the Department, the State and/or the United States of

America shall be entitled to enforce specific performance by the Development Owner (and its successors and assigns) of its obligations under this Agreement in any tribunal in the State for any and all breaches of the conditions and restrictions hereof or material representations made by the Development Owner at any time in addition to all other remedies expressly provided in this Agreement and/or by law or in equity.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 Notices

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given (i) five (5) Business Days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) Business Day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopy or other facsimile transmission, answerback requested and received, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to each other:

- (i) If to the Department, at:

Texas Department of Housing and Community
Affairs
PO BOX 13941, Austin, Texas 78711-3941
221 East 11th St., Austin, Texas 78701
Attention: Teresa A. Shell, HTC Exchange
Administrator

- (ii) If to the Development Owner at:

Villas on Raiford Carrollton Senior Housing, LLC
11445 Emerald Road, Suite 105
Dallas, Texas 75229
Attn: Chan Il Pak

with copies to:

Shackelford, Melton & McKinley, LLP
3333 Lee Parkway, Tenth Floor
Dallas, TX 75219
Attn: John C. Shackelford

(iii) If to the Developer, at:

PCS Capital, LLC
 11445 Emerald Road, Suite 105
 Dallas, Texas 75229
 Attn: Chan Il Pak

with copies to:

Shackelford, Melton & McKinley, LLP
 3333 Lee Parkway, Tenth Floor
 Dallas, TX 75219
 Attn: John C. Shackelford

(iv) If to the Lender pursuant to Section 6.3 or 11.3, at the address shown on Exhibit I.

Any of the above-listed Persons may, by ten (10) days prior written notice to all other such Persons and Entities, revise the place to which notice may be directed. Until the full ten (10) day period has elapsed and the notice of change has actually been sent and received, the locations set forth in the Summary or the most recent in effect locations shall be presumptively correct.

Section 12.2 Rules of Construction

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

- (i) Words importing the singular number include the plural number and words importing the plural number include the singular number;
- (ii) Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;
- (iii) The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;
- (iv) Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;
- (v) Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

(vi) Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

(vii) When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

Section 12.3 Binding Provisions

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

Section 12.4 American Recovery and Reinvestment Act of 2009 and State Requirements

The following criteria are required and will be followed:

(i) Requirement to Post Notice of Whistleblower Rights and Remedies: Any employer receiving funds under this Agreement shall post notice of the rights and remedies afforded whistleblowers under Section 1553 of the Recovery Act.

(ii) Requirement for Fixed-Price Contracting: To the maximum extent possible, subcontracts funded under this Agreement shall be awarded as fixed-price contracts through the use of competitive procedures. Development Owner shall post a summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures on the federal website established pursuant to Section 1526 of the Recovery Act.

(iii) Prohibited Use of Funds: Development Owner shall not use any of the funds made available under this Agreement for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, as outlined in Section 1604 of the Recovery Act.

(iv) Legal Use of Funds Certification: Development Owner hereby certifies, as a condition to receiving funds from the Department under this Agreement in accordance with Executive Order RP72, that the Exchange Program Funds will be used in accordance with State and federal laws.

(v) Job Postings on WORKINTEXAS.COM: Development Owner must post their Agreement-related job opportunities on the Workintexas.com website.

(vi) Designated Development Owner Contacts: Pursuant to State policy, Development Owner shall designate, in writing, at the time it executes this Agreement, one or more responsible and qualified individuals as points of contact with the Department to maintain a flow of current information relating to the receipt, deployment,

management and use of funds received under this Agreement. Such individuals shall be the Authorized Officers designated on Exhibit J.

(vii) Posting of Procurement Opportunities: In addition to following any applicable State or local procurement laws, Development Owner shall timely provide the Department with an electronic version of any notice of procurement opportunity for posting on the Department's website in accordance with Department policy.

(viii) Development Owner shall track all funds under this Agreement and their projected statuses separately from all other funds and comply with State and federal reporting requirements in accordance with Executive Order RP72.

(ix) Development Owner agrees to execute and deliver to the Department any and all documents, instruments, and writings that the Department may reasonably request in order to comply with the terms of the federal grant agreement between the Department and Treasury, including, but not limited to, federal reporting requirements.

Section 12.5 Assignments

This Agreement and the proceeds of the Subaward may not be assigned, pledged, hypothecated, transferred, mortgaged or otherwise conveyed to any Person or Entity without the prior written consent of the Department and the Development Owner.

Section 12.6 Absence of Rights in Third Parties

No provision of this Agreement shall be construed in any manner so as to create any rights in Persons or Entities that are not a party to this Agreement other than Treasury as contemplated in Article VI hereof. The provisions of this Agreement shall be interpreted solely to define specific duties and responsibilities between the Development Owner, the Department, and the Asset Manager (as agent and representative of the Department), and shall not provide any basis for claims of any other Person or Entity other than Treasury.

Section 12.7 Applicable Law

Except as required by federal law, this Agreement shall be construed and enforced in accordance with the internal laws of the State of Texas.

Section 12.8 Counterparts

A. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together contain the signatures of all the parties hereto or is executed by an attorney-in-fact on behalf of some or all of the parties, shall for all purposes be deemed a fully executed instrument.

Section 12.9 Survival

All representations, warranties, and indemnifications contained herein shall survive the termination of this Agreement.

Section 12.10 Separability of Provisions; Rights and Remedies; Consistency with Program Requirements

A. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid. Any portion hereof found to be illegal or invalid shall be deemed deleted *ab initio* and all other provisions shall remain in full force and effect and construed so as most nearly to effectuate the intent of the parties.

B. Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

C. The provisions of this Agreement are intended to implement the Exchange Program in accordance with the Program Requirements and with Section 42 of the Code as applicable to the Exchange Program, and shall be interpreted consistently therewith. In the event of any conflict between the provisions of this Agreement and the Program Requirements, the Program Requirements shall govern, and to the extent necessary, the inconsistent provisions of this Agreement shall be without effect.

Section 12.11 Independent Contractor; Indemnification

A. It is expressly understood and agreed by the parties hereto that the Department is contracting with the Development Owner as an independent contractor, and that Development Owner, as such, agrees to hold harmless and to indemnify the Department and its officers, agents and employees from and against any and all claims, demands and causes of action of every kind and nature which may be asserted by any third-party in connection with, arising out of, or in any way incident to the services performed by the Development Owner under this Agreement.

Section 12.12 Non-Discrimination

A. The Development Owner shall ensure that no person shall on the grounds of race, color, religions, sex, handicap, familial status, or national origin be excluded from

participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement.

Section 12.13 Force Majeure

A. Performance under this contract interrupted by an event of Force Majeure will not constitute an Event of Default. Force Majeure means an event of catastrophic weather conditions or other extraordinary elements of nature or acts of God; or acts of war (declared or undeclared); acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; or quarantines, embargoes and other similar unusual actions of federal, provincial, local or foreign Governmental Authorities where the non-performing Party is without fault in causing or failing to prevent the occurrence of such event, and such occurrence could not have been circumvented by reasonable precautions and could not have been prevented or circumvented through the use of commercially reasonable alternative sources, workaround plans or other means.

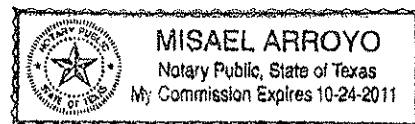
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IN WITNESS WHEREOF, each of the Parties has executed this Agreement as of the date first written above.

DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official department of the State of Texas

By: [Signature]
Name: Robbye G. Meyer
Title: Director of Multifamily Finance



NOTARY WITHOUT BOND

Department Address: 221 E. 11th Street, Austin, Texas 78701

SUBSCRIBED AND SWORN TO before me this 13th day of August, 2010.

[Signature]
Notary Public in and for the State of Texas

DEVELOPMENT OWNER:

VILLAS ON RAIFORD CARROLLTON SENIOR HOUSING, LLC,

a Texas limited liability company
By: Villas on Raiford, LLC,
a Texas limited liability company,

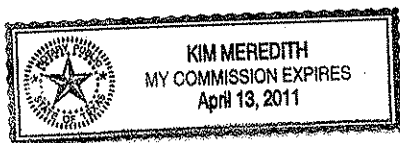
Its Sole Manager

By: [Signature]

Name: Chan Il Pak
Title: Manager

SUBSCRIBED AND SWORN TO before me this 1ST day of SEPTEMBER, 2010.

[Signature]
Notary Public in and for the State of Texas



DEVELOPER:
(For purposes of
Section 4.6)

PCS CAPITAL, LLC
a Texas limited liability company

By: 

Name: Chan Il Pak

Title: Manager

SUBSCRIBED AND SWORN TO before me this ^{15th}~~31st~~ day of ~~August~~ ^{SEPTEMBER}, 2010.


Notary Public in and for the State of Texas



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DESCRIPTION OF DEVELOPMENT SITE

LEGAL DESCRIPTION

That portion of Lot 1, Block A, NEWCREST CENTER, PHASE 2, an addition in Dallas County and Denton County, Texas, according to the plat thereof recorded in Clerk's File No. 200900321302, Map Records, Dallas County, Texas, and in Document No. 2009-200, Plat Records, Denton County, Texas, being described by metes and bounds as follows:

BEING a tract of land situated in the B. Baccus Survey, Abstract No. 119, Denton County, Texas, and the W. Caruth Survey, Abstract No. 358, Dallas County, Texas, and being all of Lot 1, Block A, NEWCREST CENTER, PHASE 2, an addition to the City of Carrollton, Dallas and Denton Counties, Texas, according to the plat thereof recorded in County Clerks File Number 200900321302, Deed Records, Dallas County, Texas, and County Clerk.s File Number 2009-200, Plat Records, Denton County, Texas, and being more particularly described as follows:

COMMENCING at a 5/8 inch iron rod with cap found in the south right-of-way line of Raiford Road (a 90. public right-of-way), recorded in Volume 97157, Page 2684, Deed Records, Dallas County, Texas, said iron rod also being the northeast corner of Lot 5, Block A, NEWCREST CENTRE SUBDIVISION, an addition to the City of Carrollton, Dallas County and Denton County, Texas, according to the plat thereof recorded in Volume 2001038, Page 01386, Deed Records, Dallas County, Texas, and in Cabinet T, Slide 90, Plat Records, Denton County, Texas, and being the beginning of a non-tangent curve to the right;

THENCE Easterly, 100.67 feet with said non-tangent curve to the right, through a central angle of 06 degrees 02 minutes 22 seconds, having a radius of 955.00 feet, whose long chord bears North 64 degrees 22 minutes 50 seconds East, 100.62 feet to a 5/8 inch iron rod with cap stamped RPLS 5696. set at the northwest corner of said Lot 1, said iron rod being the POINT OF BEGINNING;

THENCE with said south right-of-way line of Raiford Road, the following courses and distances:
Easterly, 269.46 feet with a curve to the right, through a central angle of 16 degrees 10 minutes 00 seconds, having a radius of 955.00 feet, whose long chord bears North 75 degrees 29 minutes 00 seconds East, 268.57 feet to a 5/8 inch iron rod with .KHA. cap found;

North 83 degrees 33 minutes 59 seconds East, 154.72 feet to a 5/8 inch iron rod with .KHA. cap found at the beginning of a curve to the right;

Northeasterly, 55.63 feet with the curve to the right, through a central angle of 03 degrees 20 minutes 14 seconds, having a radius of 955.00 feet, whose long chord bears North 85 degrees 14 minutes 07 seconds East, 55.62 feet to a 5/8 inch iron rod with .RPLS 5696. cap set;

South 80 degrees 22 minutes 08 seconds East, 51.47 feet to a 5/8 inch iron rod with .RPLS 5696. cap set for the beginning of a non-tangent curve to the right;

Southeasterly, 254.82 feet with the curve to the right, through a central angle of 15 degrees 26 minutes 58 seconds, having a radius of 955.00 feet, whose long chord bears South 82 degrees 19 minutes 14 seconds East, 254.04 feet to a 5/8 inch iron rod with .RPLS 5696. cap set;

North 76 degrees 00 minutes 44 seconds East, 20.11 feet to a 5/8 inch iron rod with .RPLS 5696. cap set for the beginning of a non-tangent curve to the right;

Southeasterly, 217.43 feet with the curve to the right, through a central angle of 13 degrees 02 minutes 41 seconds, having a radius of 955.00 feet, whose long chord bears South 67 degrees 01 minutes 38 seconds East, 216.96 feet to a 5/8 inch iron rod with .KHA. cap found;

South 60 degrees 30 minutes 18 seconds East, 322.56 feet to a 5/8 inch iron rod with .KHA. cap found for the beginning of a curve to the right;

Southeasterly, 159.60 feet with the curve to the right, through a central angle of 09 degrees 34 minutes 31 seconds, having a radius of 955.00 feet, whose long chord bears South 55 degrees 43 minutes 01 seconds East, 159.42 feet to an .X. Cut found at the northeast corner of Lot 1, Block A, LOWES OF CARROLLTON, an addition to the City of Carrollton, Dallas County, Texas, according to the plat thereof recorded in Volume 97132, Page 05080, Deed Records of Dallas County, Texas;

THENCE departing said south right-of-way line of Raiford Road and with the north line of said Lot 1 the following courses and distances:

South 39 degrees 05 minutes 13 seconds West, 219.33 feet to a 5/8 inch iron rod with .KHA. cap found;

South 83 degrees 05 minutes 02 seconds West, 462.92 feet to a 5/8 inch iron rod with .KHA. cap found in the east line of Lot 1R, Block A, NEWCREST CENTRE SUBDIVISION, an addition to the City of Carrollton, Dallas County, Texas, according to the plat thereof recorded in Volume 2000161, Page 2376, Deed Records, Dallas County, Texas, said iron rod also being the northwest corner said Lot 1;

THENCE North 06 degrees 54 minutes 58 seconds West, 17.01 feet with the east line of said Lot 1R to a 5/8 inch iron rod with .KHA. cap found at the northeast corner of said Lot 1R;

THENCE South 83 degrees 05 minutes 02 seconds West, 323.05 feet with the north line of said Lot 1R to the southwest corner of said Villas tract to a 5/8 inch iron rod with cap stamped .RPLS 5656. set;

THENCE with the west line of said Villas tract the following courses and distances:

North 07 degrees 35 minutes 33 seconds West, 194.69 feet, departing said north line of Lot 1R to a 5/8 inch iron rod with cap stamped .RPLS 5656. set;

South 82 degrees 14 minutes 16 seconds West, 264.52 feet to a 5/8 inch iron rod with cap stamped RPLS 5656. set;

South 78 degrees 49 minutes 17 seconds West, 116.19 feet to a 5/8 inch iron rod with cap stamped .RPLS 5656. set;

North 05 degrees 18 minutes 08 seconds East, 132.70 feet to a 5/8 inch iron rod with cap stamped .RPLS 5656. set;

North 08 degrees 06 minutes 22 seconds West, 115.84 feet to a 5/8 inch iron rod with cap stamped .RPLS 5656. set, said iron rod being the beginning of a curve to the left;

Northwesterly, 100.89 feet with said curve to the left, through a central angle of 27 degrees 31 minutes 33 seconds, having a radius of 210.00 feet, whose long chord bears North 21 degrees 52 minutes 07 seconds West, 99.92 feet to a 5/8 inch iron rod with cap stamped .RPLS 5656. set;

North 35 degrees 37 minutes 52 seconds West, 68.21 feet to the POINT OF BEGINNING and containing 577,572 square feet or 13.259 acres of land, more or less.

DEVELOPMENT BUDGET

[TDHCA Underwriting Report attached behind]

(TDHCA WILL ATTACH FINAL REPORT)



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Memorandum

To: File
From: Diamond Unique Thompson, Real Estate Analysis
cc: Brent Stewart, Director of Real Estate Analysis
Date: December 11, 2009
Re: Villas at Raiford, TDHCA #09913/07303

Subsequent to posting the December 4, 2009 Exchange underwriting addendum, the Real Estate Analysis division was notified that an amendment to change the site acreage (16.7 acres to 13.32 acres) and number of buildings (9 to 14) was approved on September 9, 2008 by program staff. The change in the number of buildings was attributable only to the changing number of firewall divisions; the actual number of buildings did not change. This amendment has no affect on the underwriting or the recommendation included in the Tax Credit Exchange / 9% HTC Addendum dated December 4, 2009.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 Real Estate Analysis Division
 Underwriting Report - Tax Credit Exchange / 9% HTC ADDENDUM

Development Name:	Villas on Raiford	Date:	December 4, 2009
Address:	Raiford Road	FILE NUMBER:	09913/08026
City:	Carrollton	Population:	Seniors
County:	Dallas	Activity:	New Construction

	Award Amount	Exchange Price	Credits Exchanged
Request:	\$10,542,494	\$0.77	\$1,369,155
Recommendation:	\$10,542,031	\$0.77	\$1,369,095

The recommended Housing Tax Credit award amount was calculated using the eligible basis-derived housing tax credit allocation, and was based on the Applicant's development cost schedule, as adjusted to meet current Real Estate Analysis Rules and Guidelines.

Conditions to Recommendation

- 1 Receipt, review, and acceptance, by cost certification of documentation that the vendors lien from the seller listed in Schedule B of the Title Commitment has be released or resolved without adversely impacting the development.
- 2 Should the terms and rates of the proposed financing change, the transaction should be re-evaluated and an adjustment to the credit allocation amount may be warranted.

Property Summary

# Units	180	Acreage:	16.7
Year Built	N/A	Units/Acre:	10.78
Current Occupancy	0%	Flood Zone:	No
Number Buildings	9	Zoning:	PD-5
Units/Building	20	Stabilized DCR:	1.32

The Applicant is now requesting to change the financing structure, including the return of the entire housing tax credit allocation for Tax Credit Exchange Program (Exchange) funds. The Subject development has qualified for a tax credit exchange price of \$0.77.

TDHCA SET-ASIDES for LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	18
60% of AMI	60% of AMI	154

Salient Issues

- None

Operating Pro Forma

The Dallas Housing Authority will provide Project-Based Housing Choice Voucher for 22 of the units. The rents for these units will be based on the 'Fair Market Rent' for Dallas County as determined by the DHA, less utility allowances. The remaining units will have rents based on: The lesser of current 2009 HTC program gross rent limits less utility allowances or the concluded market rate rents.

TCEP Asset Oversight Fee: The Underwriter's estimate includes a TCEP Asset Oversight Fee of \$50/restricted unit/year, which the Applicant's estimate does not. If the fee was included in the Applicant's estimate, the Applicant's total expenses would still be within 5% of the Underwriter's, and the Applicant's DCR would fall to 1.29.

The inclusion of the additional 30% units increased income by 7% and increased NOI by 13%.
 The Applicant's year one pro forma will be used to determine the development's debt capacity.
 The Applicant's submitted pro forma meets current Department guidelines with regard to the DCR limit.

Uses of Funds/Scope of Work

Direct construction costs pursuant to the Underwriter's original Marshall & Swift -derived estimate total \$7,818,466.

The Applicant's total development costs decreased by \$68,358 from the 10% cost increase approved by the Board in November 2008.

The Applicant's eligible contingency costs were adjusted down by \$70,010 to meet the Department guideline of 5% of eligible sitework and direct construction costs for new construction developments. The Applicant's contractor fees exceed the 14% maximum allowed by HTC guidelines by a total of \$7,001 based on the Applicant's own construction costs. Consequently the Applicant's eligible fees in this area have been reduced by the same amount with the overage effectively moved to ineligible costs.

The Applicant's developer fee exceeds 15% of the Applicant's adjusted eligible basis by \$11,551 and therefore the eligible portion of the Applicant's developer fee must be reduced by the same amount.

The Applicant's revised cost schedule will be used to determine the development's need for permanent funds and to calculate eligible basis because the Applicant's total revised development cost is within 5% of the Underwriter's estimate.

An eligible basis of \$15,936,099 supports annual tax credits of \$1,369,095.

Source of Funds

The exchange price of \$0.77 is \$0.05 lower than the syndication rate utilized during the most recent underwriting, resulting in a decrease in proceeds created by the tax credit allocation.

KeyBank Real Estate Capital will provide interim and permanent financing in the amount of \$7,860,600. Both the interim and permanent loans will be fixed at a 6.45% interest rate, and the permanent loan will be fully amortized over 40 years.

Unique Program Requirements Reviewed

- None

Underwriting Assumptions/Limiting Conditions

- Only those portions of the report that are materially affected by the proposed changes are discussed above. This report should be read in conjunction with the original underwriting report for a full evaluation of the originally proposed development plan and structure.

Underwriter:	<u>Diamond Unique Thompson</u>	Date:	<u>December 4, 2009</u>
Manager of Real Estate Analysis:	<u>Audrey Martin</u>	Date:	<u>December 4, 2009</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>	Date:	<u>December 4, 2009</u>

MULTIFAMILY COMPARATIVE ANALYSIS

Villas on Raiford, Carrollton, Tax Credit Exchange / 9% HTC #09913/07303

Type of Unit	Number	Bedrooms	No. of Baths	Size In SF	Gross Rent Lmt.	Rent Collected	Rent per Month	Rent per SF	Tot-Pd Util	WS&T	
TC 30%	9	1	1	727	\$380	\$691	\$6,219	\$0.95	\$98.00	\$46.00	
TC 60%	2	1	1	727	\$760	\$691	\$1,382	\$0.95	98.00	46.00	
TC 60%	37	1	1	727	\$760	662	\$24,494	\$0.91	98.00	46.00	
TC 60%	24	1	1	733	\$760	662	\$15,888	\$0.90	98.00	46.00	
TC 60%	18	1	1	765	\$760	662	\$11,916	\$0.87	98.00	46.00	
MR	4	1	1	765		760	\$3,040	\$0.99	123.00	54.00	
TC 30%	9	2	2	860	\$456	\$835	\$7,515	\$0.97	123.00	54.00	
TC 60%	2	2	2	860	\$912	\$835	\$1,670	\$0.97	123.00	54.00	
TC 60%	10	2	2	860	\$912	789	\$7,890	\$0.92	123.00	54.00	
TC 60%	41	2	2	860	\$912	789	\$32,349	\$0.92	123.00	54.00	
TC 60%	20	2	2	863	\$912	789	\$15,780	\$0.91	123.00	54.00	
MR	4	2	2	863		890	\$3,560	\$1.03	123.00	54.00	
TOTAL:	180		AVERAGE:	796		\$732		\$131,703	\$0.92	\$110.50	\$50.00

INCOME

Total Net Rentable Sq Ft: **143,350**

POTENTIAL GROSS RENT

Secondary Income Per Unit Per Month: \$15.00

Other Support Income: Interest Income

POTENTIAL GROSS INCOME

Vacancy & Collection Loss % of Potential Gross Income: -7.50%

Employee or Other Non-Rental Units or Concessions

EFFECTIVE GROSS INCOME

EXPENSES

	% OF EGI	PER UNIT	PER SQ FT	TDHCA-Exchange	TDHCA - UW	APPLICATION	APPLICANT-Exchange	PER SQ FT	PER UNIT	% OF EGI
General & Administrative	4.20%	\$348	0.44	\$62,687	\$62,687	\$46,100	\$47,100	\$0.33	\$262	3.16%
Management	4.12%	341	0.43	61,420	54,838	55,740	59,675	0.42	332	4.00%
Payroll & Payroll Tax	11.31%	937	1.18	168,730	161,936	157,644	162,000	1.13	900	10.86%
Repairs & Maintenance	6.02%	499	0.63	89,872	85,938	82,130	88,500	0.62	492	5.93%
Utilities	3.72%	309	0.39	55,535	45,796	31,500	42,500	0.30	236	2.85%
Water, Sewer, & Trash	4.24%	351	0.44	63,217	67,081	34,000	60,000	0.42	333	4.02%
Property Insurance	2.73%	226	0.28	40,716	42,474	52,920	45,000	0.31	250	3.02%
Property Tax 2.562287	11.95%	990	1.24	178,229	196,372	225,000	195,000	1.36	1,083	13.07%
Reserve for Replacements	3.02%	250	0.31	45,000	45,000	45,000	45,000	0.31	250	3.02%
TDHCA Compliance Fees	0.46%	38	0.05	6,880	6,880	7,200	6,880	0.05	38	0.46%
TCEP Asset Oversight Fees	0.60%	50	0.06	9,000				0.06	50	0.60%
Other: Supportive Services	1.01%	83	0.10	15,000	15,000	15,000	15,000	0.10	83	1.01%
TOTAL EXPENSES	53.37%	\$4,424	\$5.55	\$796,287	\$784,002	\$752,234	\$766,655	\$5.35	\$4,259	51.39%
NET OPERATING INC	46.63%	\$3,864	\$4.85	\$695,587	\$621,646	\$641,314	\$725,221	\$5.06	\$4,029	48.61%

DEBT SERVICE

KeyBank Real Estate Capital	38.79%	\$3,049	\$3.83	\$548,889	\$558,854	\$558,854	\$554,374	\$3.87	\$3,080	37.16%
Additional Financing	0.00%	\$0	\$0.00	0	0	0	0	\$0.00	\$0	0.00%
Additional Financing	0.00%	\$0	\$0.00	0	0	0	0	\$0.00	\$0	0.00%
NET CASH FLOW	0.83%	\$815	\$1.02	\$146,698	\$62,792	\$82,460	\$170,847	\$1.19	\$949	11.45%

AGGREGATE DEBT COVERAGE RATIO

RECOMMENDED DEBT COVERAGE RATIO

CONSTRUCTION COST

Description	Factor	% of TOTAL	PER UNIT	PER SQ FT	TDHCA-Exchange	TDHCA - UW	APPLICATION	APPLICANT-Exchange	PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)		10.54%	\$11,111	\$13.95	\$2,000,000	\$2,060,000	\$2,060,000	\$2,560,600	\$17.86	\$14,226	12.89%
Off-Sites		0.11%	111	0.14	20,000	0	0	20,000	0.14	111	0.10%
Sitework		8.53%	9,000	11.30	1,620,000	845,826	845,826	1,620,000	11.30	9,000	8.18%
Direct Construction		41.19%	43,436	54.54	7,818,466	7,818,466	8,424,004	7,974,281	55.63	44,302	40.16%
Contingency	5.00%	2.46%	2,622	3.29	471,923	433,215	463,491	549,724	3.83	3,054	2.77%
Contractor's Fees	14.00%	6.96%	7,341	9.22	1,321,385	1,213,001	1,297,777	1,350,200	9.42	7,501	6.80%
Indirect Construction		7.63%	8,050	10.11	1,448,977	704,500	704,500	1,448,977	10.11	8,050	7.30%
Ineligible Costs		3.35%	3,530	4.43	635,386	1,273,693	1,273,693	635,386	4.43	3,530	3.20%
Developer's Fees	15.00%	10.80%	11,393	14.31	2,050,809	1,849,714	1,958,505	2,090,173	14.58	11,612	10.53%
Interim Financing		5.22%	5,507	6.92	991,306	1,316,420	1,316,420	991,306	6.92	5,507	4.99%
Reserves		3.18%	3,355	4.21	603,938	610,569	655,787	617,981	4.31	3,433	3.11%
TOTAL COST		100.00%	\$105,457	\$132.42	\$18,982,189	\$18,125,403	\$19,000,003	\$19,858,628	\$138.53	\$110,328	100.00%
+ 10% Increase						0	\$928,983				
Total Cost						18,125,403	19,928,986				
Construction Cost Recap	69.17%		\$62,399	\$78.35	\$11,231,774		\$11,494,205	\$80.18	\$63,867	67.88%	

SOURCES OF FUNDS

				TDHCA-Exchange	TDHCA - UW	APPLICATION	APPLICANT-Exchange	RECOMMENDED	
KeyBank Real Estate Capital	41.41%	\$43,670	\$54.84	\$7,860,600	\$7,000,000	\$7,000,000	\$7,860,600	\$7,860,600	Developer Fee Available
Additional Financing	0.00%	\$0	\$0.00	0	0	0	0	0	\$2,078,622
Tax Credit Exchange Program	55.54%	\$58,569	\$73.54	10,542,494	0	0	10,542,494	10,542,031	
HTC Syndication Proceeds	0.00%	\$0	\$0.00	0	11,158,884	11,158,884	0	0	% of Dev. Fee Deferred
Deferred Developer Fees	4.79%	\$5,051	\$6.34	909,218	841,117	841,117	909,218	895,397	43%
Additional (Excess) Funds Req'd	-1.74%	(\$1,834)	(\$2.30)	(330,123)	(874,598)	926,985	546,316	0	15-Yr Cumulative Cash Flow
TOTAL SOURCES				\$18,982,189	\$18,125,403	\$19,928,986	\$19,858,628	\$19,298,026	\$3,349,571

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

Villas on Raiford, Carrollton, Tax Credit Exchange / 9% HTC #09913/07303

DIRECT CONSTRUCTION COST ESTIMATE				
Marsabit & Swift Residential Cost Handbook				
Average Quality Multiple Residence Basis				
CATEGORY	FACTOR	UNIT/COST FT	PER SF	AMOUNT
BASE COST				\$0
Adjustments				
Exterior Wall Finish			\$0.00	\$0
Elevate			0.09	0
EIFS Ceilings			0.09	0
Roofing			0.00	0
Subfloor			(2.42)	(346,907)
Floor Cover			2.38	241,173
Breezeways/Balconies	\$22.95		0.00	0
Plumbing Fixtures	\$895		0.00	0
Receptacles	\$410		0.00	0
Builder Appliances	\$1,900	160	2.28	324,000
Exterior Stairs	\$1,875		0.00	0
Enclosed Corridors	\$9.92		0.00	0
Heating/Cooling			1.83	282,391
Garage/Carports			0.00	0
Common Bldg. Area			0.00	0
Other Site Work	\$2.15	143,350	2.15	308,203
SUBTOTAL			6.20	889,799
Current Cost Multiplier	1.01		0.09	8,888
Total Multiple			6.20	(889,799)
TOTAL DIRECT CONSTRUCTION COSTS			\$0.05	\$8,888
Hard Copies, Survey, etc. (3.00%)			\$0.00	(\$347)
Interim Construction Interest (3.28%)			(0.00)	(300)
Contractors O/R & Profit (13.50%)			(0.01)	(1,022)
NET DIRECT CONSTRUCTION COSTS			\$0.05	\$7,219

PAYMENT COMPUTATION

Primary	\$7,860,600	Amort	480
Int Rate	6.45%	DCR	1.27
Secondary	\$0	Amort	0
Int Rate	0.00%	Subtotal DCR	1.27
Additional	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.27

RECOMMENDED FINANCING STRUCTURE

APPLICANT'S NOI:

Primary Debt Service	\$548,889
Secondary Debt Service	0
Additional Debt Service	0
NET CASH FLOW	\$176,332

Primary	\$7,860,600	Amort	480
Int Rate	6.45%	DCR	1.32
Secondary	\$0	Amort	0
Int Rate	0.00%	Subtotal DCR	1.32
Additional	\$0	Amort	0
Int Rate	0.00%	Aggregate DCR	1.32

OPERATING INCOME & EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE (APPLICANT'S NOI)

INCOME at 2.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
POTENTIAL GROSS RENT	\$1,580,438	\$1,612,045	\$1,644,266	\$1,677,171	\$1,710,715
Secondary Income	24,180	24,664	25,157	25,660	26,173
Other Support Income: Interest	8,220	8,384	8,552	8,723	8,898
POTENTIAL GROSS INCOME	1,612,836	1,645,093	1,677,995	1,711,554	1,745,786
Vacancy & Collection Loss	(120,960)	(123,382)	(125,850)	(128,367)	(130,934)
Employee or Other Non-Rental	0	0	0	0	0
EFFECTIVE GROSS INCOME	\$1,491,876	\$1,521,711	\$1,552,145	\$1,583,188	\$1,614,852
EXPENSES at 3.00%					
General & Administrative	\$47,100	\$48,513	\$49,988	\$51,467	\$53,011
Management	59,675	60,868	62,086	63,327	64,594
Payroll & Payroll Tax	162,000	166,860	171,886	177,022	182,332
Repairs & Maintenance	88,500	91,155	93,890	96,706	99,608
Utilities	42,500	43,775	45,098	46,441	47,834
Water, Sewer & Trash	60,000	61,800	63,654	65,564	67,531
Insurance	45,000	46,350	47,741	49,173	50,648
Property Tax	195,000	200,850	206,876	213,082	219,474
Reserve for Replacements	45,000	46,350	47,741	49,173	50,648
TDHCA Compliance Fee	6,880	7,086	7,299	7,518	7,744
TCAP Assal Oversight Fee	0	0	0	0	0
Other	16,000	15,450	15,914	16,391	16,883
TOTAL EXPENSES	\$766,655	\$769,059	\$812,121	\$836,864	\$860,306
NET OPERATING INCOME	\$725,221	\$732,653	\$740,024	\$747,324	\$754,545
DEBT SERVICE					
First Lien Financing	\$548,889	\$548,889	\$548,889	\$548,889	\$548,889
Second Lien	0	0	0	0	0
Other Financing	0	0	0	0	0
NET CASH FLOW	\$176,332	\$183,764	\$191,136	\$198,436	\$205,657
DEBT COVERAGE RATIO	1.32	1.33	1.35	1.36	1.37

YEAR 10	YEAR 15	YEAR 20	YEAR 30
\$1,888,767	\$2,085,352	\$2,302,397	\$2,806,609
28,897	31,905	35,228	42,940
9,824	10,846	11,975	14,597
1,927,488	2,128,103	2,349,598	2,864,146
(144,562)	(159,608)	(176,220)	(214,811)
0	0	0	0
\$1,782,927	\$1,968,495	\$2,173,378	\$2,649,335
\$81,455	\$71,243	\$62,590	\$110,994
71,317	78,740	86,935	105,973
211,373	245,040	284,069	381,764
115,472	133,864	155,185	208,556
55,453	64,285	74,524	100,154
78,286	90,765	105,210	141,394
58,715	68,067	78,908	106,045
254,431	294,955	341,934	459,530
58,715	68,067	78,908	106,045
8,977	10,407	12,064	16,213
0	0	0	0
19,572	22,689	26,303	35,348
\$993,766	\$1,148,110	\$1,326,629	\$1,772,018
\$789,161	\$820,385	\$846,749	\$877,317
\$548,889	\$548,889	\$548,889	\$548,889
0	0	0	0
0	0	0	0
\$240,273	\$271,496	\$297,860	\$328,429
1.44	1.49	1.54	1.60

HTC ALLOCATION ANALYSIS -Villas on Raiford, Carrollton, Tax Credit Exchange / 9% HTC #09913/07303

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
Acquisition Cost				
Purchase of land	\$2,560,600	\$2,000,000		
Purchase of buildings				
Off-Site Improvements	\$20,000	\$20,000		
Sitework	\$1,620,000	\$1,620,000	\$1,620,000	\$1,620,000
Construction Hard Costs	\$7,974,281	\$7,818,466	\$7,974,281	\$7,818,466
Contractor Fees	\$1,350,200	\$1,321,385	\$1,343,199	\$1,321,385
Contingencies	\$549,724	\$471,923	\$479,714	\$471,923
Eligible Indirect Fees	\$1,448,977	\$1,448,977	\$1,448,977	\$1,448,977
Eligible Financing Fees	\$991,306	\$991,306	\$991,306	\$991,306
All Ineligible Costs	\$635,386	\$635,386		
Developer Fees			\$2,078,622	
Developer Fees	\$2,090,173	\$2,050,809		\$2,050,809
Development Reserves	\$617,981	\$603,938		
TOTAL DEVELOPMENT COSTS	\$19,858,628	\$18,982,189	\$15,936,099	\$15,722,866

Deduct from Basis:			
All grant proceeds used to finance costs in eligible basis			
B.M.R. loans used to finance cost in eligible basis			
Non-qualified non-recourse financing			
Non-qualified portion of higher quality units [42(d)(3)]			
Historic Credits (on residential portion only)			
TOTAL ELIGIBLE BASIS		\$15,936,099	\$15,722,866
High Cost Area Adjustment		100%	100%
TOTAL ADJUSTED BASIS		\$15,936,099	\$15,722,866
Applicable Fraction		95%	95%
TOTAL QUALIFIED BASIS		\$15,212,165	\$15,008,619
Applicable Percentage		9.00%	9.00%
TOTAL AMOUNT OF TAX CREDITS		\$1,369,095	\$1,350,776

Syndication Proceeds	0.7700	\$10,542,031	\$10,400,973
Total Tax Credits (Eligible Basis Method)		\$1,369,095	\$1,350,776
Syndication Proceeds		\$10,542,031	\$10,400,973
Previously Awarded Tax Credits - Total		\$1,369,155	
Syndication Proceeds		\$10,542,494	
Gap of Syndication Proceeds Needed		\$11,437,428	
Total Tax Credits (Gap Method)		\$1,485,380	
Exchange Funds Requested		\$10,542,494	
Amount of Credits Returned (Applicant)		\$1,369,155	



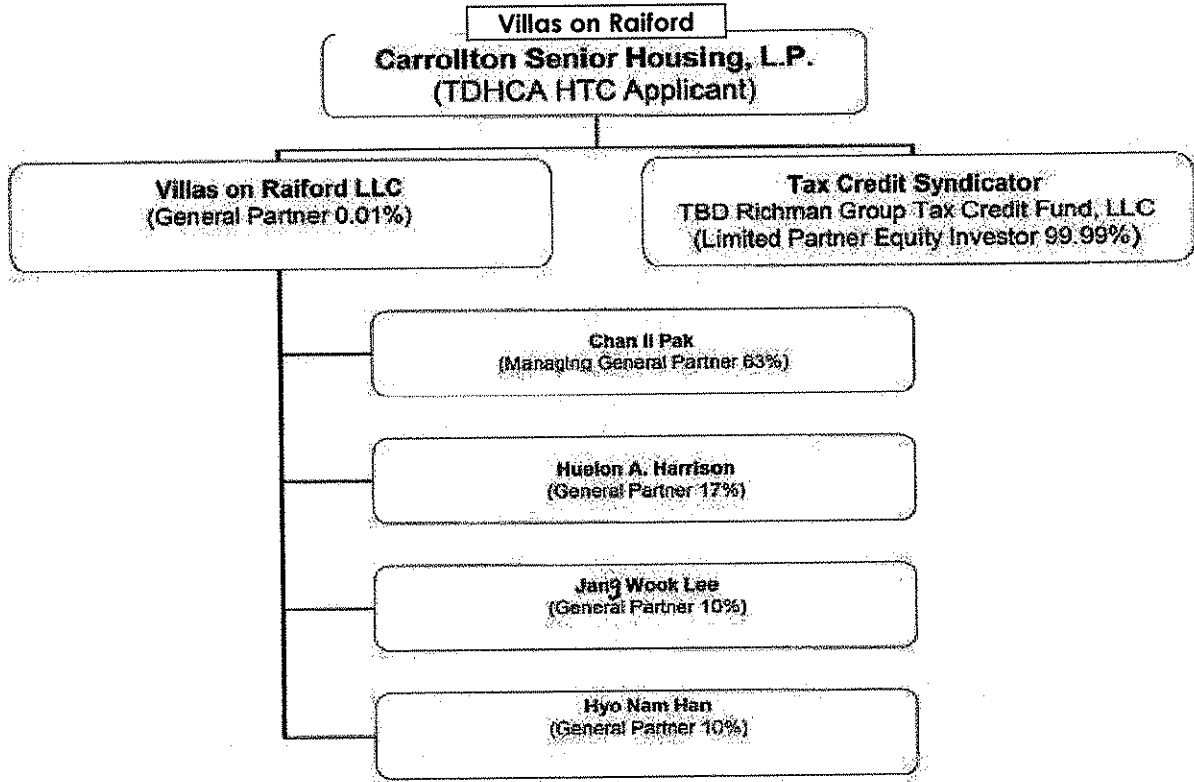
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 Real Estate Analysis Division
 Underwriting Report

REPORT DATE: 11/25/07 PROGRAM: 9% HTC FILE NUMBER: 07303

DEVELOPMENT																		
Villas on Raiford																		
Location: <u>Raiford Road</u>						Region: <u>0</u>												
City: <u>Carrollton</u>		County: <u>Dallas</u>		Zip: <u>75007</u>		<input type="checkbox"/> QCT <input type="checkbox"/> DDA												
Key Attributes: <u>Seniors, New Construction, Urban/Exurban</u>																		
ALLOCATION																		
	REQUEST			RECOMMENDATION														
TDHCA Program	Amount	Interest	Amort/Term	Amount	Interest	Amort/Term												
Housing Tax Credit (Annual)	\$1,200,000			\$1,200,000														
<ol style="list-style-type: none"> ¹ Receipt, review, and acceptance, by cost certification of documentation that the vendors lien from the seller listed in Schedule B of the Title Commitment has be released or resolved without adversely impacting the development. ² Should the terms and rates of the proposed debt or syndication change, the transaction should be re-evaluated and an adjustment to the credit allocation amount may be warranted. 																		
SALIENT ISSUES																		
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center; padding: 5px;">TDHCA SET-ASIDES for LURA</th> </tr> <tr> <th style="text-align: center; padding: 5px;">Income Limit</th> <th style="text-align: center; padding: 5px;">Rent Limit</th> <th style="text-align: center; padding: 5px;">Number of Units</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">30% of AMI</td> <td style="text-align: center; padding: 5px;">30% of AMI</td> <td style="text-align: center; padding: 5px;">18</td> </tr> <tr> <td style="text-align: center; padding: 5px;">60% of AMI</td> <td style="text-align: center; padding: 5px;">60% of AMI</td> <td style="text-align: center; padding: 5px;">154</td> </tr> </tbody> </table>							TDHCA SET-ASIDES for LURA			Income Limit	Rent Limit	Number of Units	30% of AMI	30% of AMI	18	60% of AMI	60% of AMI	154
TDHCA SET-ASIDES for LURA																		
Income Limit	Rent Limit	Number of Units																
30% of AMI	30% of AMI	18																
60% of AMI	60% of AMI	154																
PROS			CONS															
<ul style="list-style-type: none"> ▪ This would be the first new tax credit development in Carrollton in 14 years. ▪ The subject represents the first elderly tax credit development in Carrollton and the second in the market. 			<ul style="list-style-type: none"> ▪ The development would need to capture a majority of the projected market area demand (i.e., capture rate exceeds 50%). <p style="margin-left: 20px;">There may be a limited demand for the 1 and 2 bedroom units targeting 60% households as evidenced by their unit capture rates over 100%.</p>															
PREVIOUS UNDERWRITING REPORTS																		
No previous reports.																		

DEVELOPMENT TEAM

OWNERSHIP STRUCTURE



CONTACT

Contact: Chan Pak Il Phone: (972) 620-3887 Fax: (972) 620-3880
 Email: cipak2005@yahoo.com

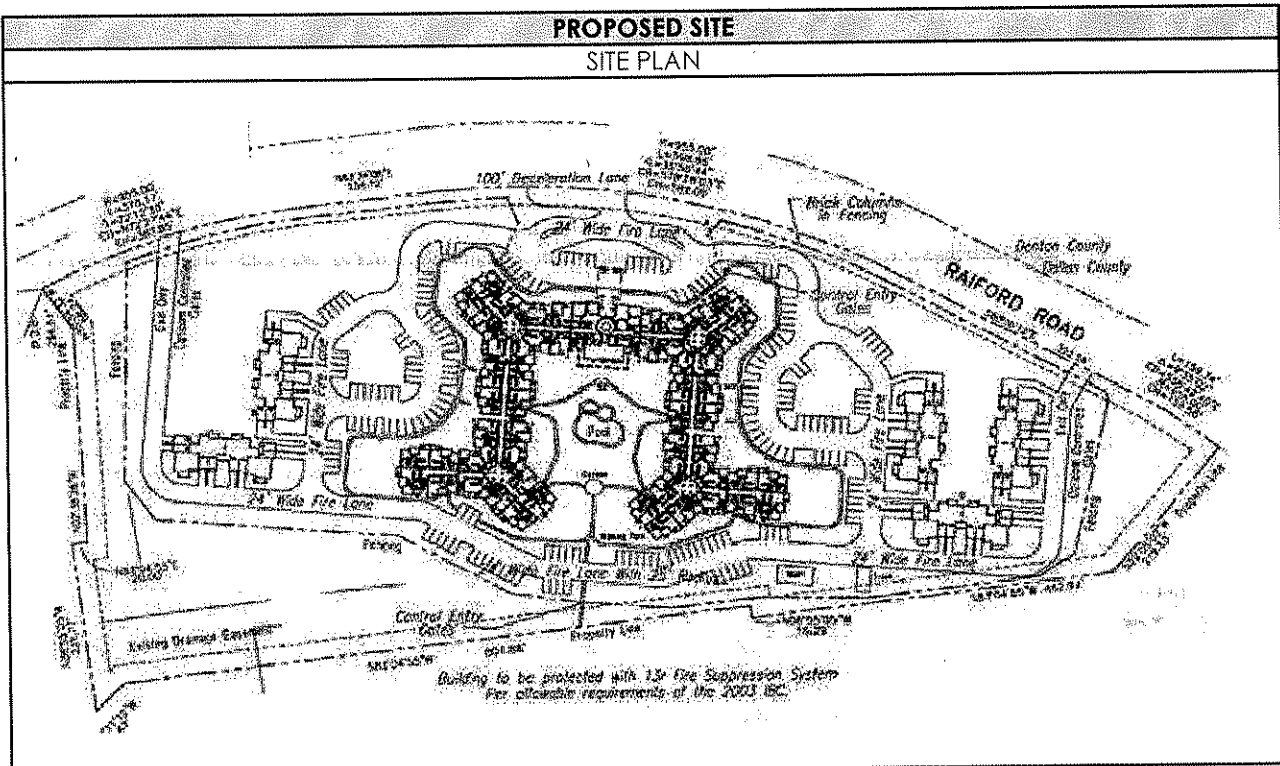
KEY PARTICIPANTS

Name	Net Assets	Liquidity ¹	# of Complete Developments
Chan Il Pak	CONFIDENTIAL		N/A
Jang Lee	CONFIDENTIAL		N/A
Hyo Han	CONFIDENTIAL		N/A
Huelon Harrison	CONFIDENTIAL		2
Anderson Capital, LLC	Consultant		N/A

¹ Liquidity = Current Assets - Current Liabilities

IDENTITIES of INTEREST

- The Applicant and Developer are related entities. This is a common relationship for HTC-funded developments.



BUILDING CONFIGURATION

Building Type	I	II	III									Total Buildings
Floors/Stories	1	3	3									
Number	5	2	2									9

BR/BA	SF	Units										Total Units	Total SF
1/1	727		12	12								48	34,896
2/1	733		6	6								24	17,592
1/1	765	2	3	3								22	16,830
2/1	860	2	10	10								50	43,000
2/2	860		3	3								12	10,320
2/2	863		6	6								24	20,712
Units per Building		4	40	40								180	143,350

SITE ISSUES

Total Size: 16.7 acres Scattered site? Yes No
 Flood Zone: Zone X Within 100-yr floodplain? Yes No
 Zoning: PD-5 Needs to be re-zoned? Yes No N/A
 Comments:

According to an addendum letter from PSI, dated July 17, 2007, "The northwestern portion of the subject property along Raiford Road is located in Zone X shaded, representing areas of 500-year flood and areas of 100-year flood with average depths of less than one foot or with drainage areas of less than one square mile."

TDHCA SITE INSPECTION

Inspector: Manufactured Housing Staff Date: 5/8/2007

Overall Assessment:
 Excellent Acceptable Questionable Poor Unacceptable

Surrounding Uses:

- North: Raiford Road, vacant land and residential uses.
- South: Commercial and retail uses.
- East: Raiford Road, vacant land and residential uses.
- West: Commercial and retail uses and vacant land.

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: PSI Date: 3/8/2007

Recognized Environmental Concerns (RECs) and Other Concerns:

- "PSI has conducted a noise study for the subject property in accordance with current U.S. Department of Housing and Urban Development (HUD) guidelines. Raiford Road is a four lane roadway bisected by a grass covered median, which extends along the northern border of the subject property from Old Denton Road on the west south to Trinity Mills Road. Nob Hill Greenbelt Park is located on the north side of Raiford Road, and retail stores are located approximately 800 feet south of Raiford Road, along Trinity Mills Road. According to aerial photographs, Raiford Road was constructed between 1995 and 2005. No structures are located on Raiford Road, but two entrances to Lowe's Home Improvement retail store are located on the south side of Raiford Road approximately 1,050 feet and 450 feet north of Trinity Mills Road.

Raiford Road is controlled by a stop light at the intersection of Old Denton Road and Raiford Road, and a stop sign at the intersection of Raiford Road and Trinity Mills Road. PSI's observations revealed the road appeared to be lightly traveled. No traffic counts were available for Raiford Road. PSI evaluated the noise from airports within 15 miles, major roads within 1,000 feet and railroads within 3,000 feet to the subject property. The study concluded the site was acceptable with a total DNL of approximately 60 decibels." (Addendum)

MARKET HIGHLIGHTS

Provider: Ipser & Associates, Inc. Date: 3/19/2007

Contact: Edward Ipser Phone: (817) 927-2838 Fax: (817) 927-0032

Number of Revisions: 1 Date of Last Applicant Revision: 10/22/2007

Primary Market Area (PMA): 75.8 Square Miles (≈ 4.93 Mile Radius)

"The Market Area (Map 5) encompasses the City of Carrollton including its part in Denton County, and includes the adjoining communities of Addison, Coppell, and Hebron..." (p.2-13)

Secondary Market Area (SMA):

The Market Analyst did not define a secondary market area.

PROPOSED, UNDER CONSTRUCTION & UNSTABILIZED COMPARABLE DEVELOPMENTS							
PMA				SMA			
Name	File #	Total Units	Comp Units	Name	File #	Total Units	Comp Units
Evergreen at Farmers Branch	07254	90	90	No secondary market			

INCOME LIMITS						
Dallas						
% AMI	1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons
30	\$13,950	\$15,950	\$17,950	\$19,950	\$21,550	\$23,150
60	\$27,960	\$31,920	\$35,940	\$39,900	\$43,080	\$46,260

MARKET ANALYST'S PMA DEMAND by UNIT TYPE							
Unit Type	Turnover Demand	Growth Demand	Other Demand	Total Demand	Subject Units	Unstabilized Comparable (PMA)	Capture Rate
1 BR/30% Rent Limit	25	5		30	9		30%
1 BR/60% Rent Limit	52	7		59	76		129%
2 BR/30% Rent Limit	37	5		42	9		21%
2 BR/60% Rent Limit	94	17		111	78		70%

UNDERWRITER'S PMA DEMAND by UNIT TYPE							
Unit Type	Turnover Demand	Growth Demand	Other Demand	Total Demand	Subject Units	Unstabilized Comparable (PMA)	Capture Rate
1 BR/30% Rent Limit	25	5		30	9	5	47%
1 BR/60% Rent Limit	52	7		59	76	40	197%
2 BR/30% Rent Limit	37	5		42	9	4	31%
2 BR/60% Rent Limit	94	17		111	78	41	107%

OVERALL DEMAND											
		Target Households	Household Size	Income Eligible	Tenure	Demand					
PMA DEMAND from TURNOVER											
Market Analyst	p. Exhb N-1A	13%	21,272	100%	21,272	19%	4,042	22%	889	35%	312
Underwriter		13%	20,941	100%	20,941	18%	3,718	23%	869	26%	313
PMA DEMAND from HOUSEHOLD GROWTH											
Market Analyst	p. Exhb N-1A				891	19%	169	22%	37	100%	39
Underwriter				100%	843	18%	150	23%	35	100%	41

INCLUSIVE CAPTURE RATE							
		Subject Units	Unstabilized Comparable (PMA)	Unstabilized Comparable (25% SMA)	Total Supply	Total Demand (w/25% of SMA)	Inclusive Capture Rate
Market Analyst	p. Exhb N-1A	172	90	0	262	351	74.64%
Underwriter		172	90	0	262	354	73.94%

During initial completion of the underwriting report but prior to posting, the Underwriter informed the Applicant that the inclusive capture rate as recalculated by the Underwriter exceeded the Department maximum of 75% for elderly developments per 10TAC § 1.32(i)(1)(A). Subsequent to informing the Applicant of this issue, the Applicant identified several inconsistencies within the submitted Market Study and requested additional time before posting the report in order to discuss these items further with the Market Analyst.

It should be noted, the Applicant did not make material changes to the market area, but rather provided information that corrected what had previously been submitted about the original market.

One of the major items of concern in the submitted market study and the main reason the capture rate calculated by the Underwriter exceeded the Department maximum of 75% for this type of development, was the inclusion of 90 tax credit units from the recently approved Evergreen at Farmers Branch (TDHCA #07254). At the time the market study was completed, these 90 units were only a part of the 2007 pre-application listing; therefore, the Market Analyst did not consider them as unstabilized units. Furthermore, the Market Analyst indicated that the census tract that Evergreen at Farmers Branch is situated in had zero population at the time and no demographics were actually being used from the particular area. Thus, the Market Analyst's reason for including this seemingly unnecessary area just South of Interstate 635 in the market area was that the drawn boundaries were following the geographic borders of the area.

Other inconsistencies of the market study identified by the Applicant included areas within the text which identified a different market and inconsistencies within the data tables, particularly, the submitted HISTA data. According to the Market Analyst, the submitted HISTA tables appeared to leave off a set of census tracts, slightly increasing the projected senior households for 2011. The general population and demographics of the market area remained unchanged.

As part of the information submitted, the Applicant provided revised HISTA tables to include data from a number of census tracts that had been unintentionally left off previously. Also in the corrected information provided by the Applicant, the Market Analyst chose to increase the turnover rate from 26% to 35%, but provided little to no documentation to support this claim. However, the Underwriter was able to find and utilize 2000 Census data through American FactFinder (Data Set: Census 2000 Summary File 3 (SF 3), HCT7, TENURE BY AGE OF HOUSEHOLDER BY YEAR HOUSEHOLDER MOVED INTO UNIT) to determine that in a 15 month period, senior households in the area turned over at approximately 35.83%. Therefore, the Underwriter was able to justify using a higher turnover rate of 35.83% in the demand calculation.

As a result of utilizing the corrected HISTA data supplied by the Market Analyst and the higher turnover rate, the Underwriter was able to achieve an inclusive capture rate, including the 90 units at Evergreen at Farmers Branch, of 73.94%, which is slightly below the Department maximum of 75%.

Primary Market Occupancy Rates:

"Occupancy of 1-Bd units in the market area was found to be 93.5% versus 87.7% for 2-Bd units, suggesting that 1-Bd units are more in demand." (p. 3-8)

Absorption Projections:

"Average absorption for the subject is estimated at 15 to 18 units per month, and it is expected that an 10 to 12 month lease-up period will be required to achieve 92.5% occupancy of the 180 units. Some tenants could be expected to relocate from multi-family complexes or from the higher cost, full-service retirement communities." (p. 2-21)

RENT ANALYSIS (Tenant-Paid Net Rents)							
Unit Type (% AMI)			Proposed Rent	Program Maximum	Market Rent	Underwriting Rent	Savings Over Market
1 BR	727 SF	30%	\$296	\$296	\$750	\$296	\$454
1 BR	727 SF	60%	\$656	\$671	\$750	\$671	\$79
1 BR	733 SF	60%	\$661	\$671	\$750	\$671	\$79
1 BR	765 SF	60%	\$671	\$671	\$760	\$671	\$89
1 BR	765 SF	MR	\$750	N/A	\$760	\$760	\$0
2 BR	860 SF	30%	\$335	\$335	\$890	\$335	\$555
2 BR	860 SF	60%	\$780	\$785	\$890	\$785	\$105
2 BR	863 SF	60%	\$785	\$785	\$890	\$785	\$105
2 BR	863 SF	MR	\$900	N/A	\$890	\$890	\$0

Market Impact:

"There are no available data for unit mix for elderly HTC units in the market area. However, of the two HTC complexes in the market area, only one of them has 1-Bd units. According to Census 2000 data, the market area's renter-occupied housing, including single family and mobile home units, was composed of 6.3% efficiencies, 41.7% 1-Bd units, 34.3% 2-Bd units, 14.9% 3-Bd units and 2.8% with 4 or more bedrooms." (p. 3-8)

Comments:

The Underwriter found the market study provided sufficient information on which to base a funding recommendation.

OPERATING PROFORMA ANALYSIS

Income: Number of Revisions: 1 Date of Last Applicant Revision: 7/16/2007

The Applicant's projected rents collected per unit for a majority of the units set aside at 60% and the one bedroom Market rate units appear to be arbitrarily lower than the Underwriter's projected rents, calculated by subtracting tenant-paid utility allowances as of June 1, 2006, maintained by Dallas Housing Authority, from the 2007 program gross rent limits. Tenants will be required to pay electric utility costs only. The Applicant's secondary income and vacancy and collection loss assumptions are in line with current TDHCA underwriting guidelines, and despite the Applicant's use of slightly lower rents for the units with rents restricted at the 60% level, as well as the Market rate units, effective gross income is within 5% of the Underwriter's estimate.

Expense: Number of Revisions: 1 Date of Last Applicant Revision: 7/16/2007

The Applicant's total annual operating expense projection at \$4,179 per unit is within 5% of the Underwriter's estimate of \$4,356, derived from, the TDHCA database, and third-party data sources. The Applicant's revised budget shows several line item estimates that deviate significantly when compared to the database averages, specifically: General & Administrative (\$17K lower), Utilities (\$14K lower), Water, Sewer & Trash (\$33K lower), and Property Tax (\$29K higher).

Conclusion:

The Applicant's effective gross income, operating expenses, and net operating income are within 5% of the Underwriter's estimates; therefore, the Applicant's year one proforma will be used to determine the development's debt capacity. The proposed permanent financing structure results in an initial year's debt coverage ratio (DCR) of 1.15, which is within the Department's DCR guideline of 1.15 to 1.35.

Feasibility:

The underwriting 30-year proforma utilizes a 3% annual growth factor for income and a 4% annual growth factor for expenses in accordance with current TDHCA guidelines. As noted above, the **Applicant's** base year effective gross income, expense and net operating income were utilized resulting in a debt coverage ratio that remains above 1.15 and continued positive cashflow. Therefore, the development can be characterized as feasible for the long-term.

ACQUISITION INFORMATION

ASSESSED VALUE

Land Only: 16.3 acres	<u>\$1,273,790</u>	Tax Year:	<u>2006</u>
Existing Buildings:	<u>N/A</u>	Valuation by:	<u>Dallas CAD</u>
Total Assessed Value:	<u>\$1,273,790</u>	Tax Rate:	<u>2.727382</u>

EVIDENCE of PROPERTY CONTROL

Type:	<u>Unimproved Property Contract/ Special Warranty Deed</u>	Acreage:	<u>13.71</u>
Contract Expiration:	<u>N/A</u>	Valid Through Board Date?	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> No
Acquisition Cost:	<u>\$2,000,000</u>	Other:	<u>Settlement Statement Provided</u>
Seller:	<u>Newcrest Capital Company LP</u>	Related to Development Team?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

TITLE

Comments:

Schedule B of the Title Commitment lists a Vendor's lien retained in the Special Warranty Deed dated March 2, 2007 by and between Newcrest Capital Company, LP and Chan and Soon Pak in the principal amount of \$1,500,000.

Receipt, review, and acceptance, by cost certification of documentation that the vendors lien from the seller listed in Schedule B of the Title Commitment has be released or resolved without adversely impacting the development is a condition of this report.

CONSTRUCTION COST ESTIMATE EVALUATIONCOST SCHEDULE Number of Revisions: 2 Date of Last Applicant Revision: 9/27/2007

Acquisition Value:

The site cost of \$145,879 per acre or \$11,111 per unit is assumed to be reasonable since the acquisition is an arm's-length transaction.

Sitework Cost:

The Applicant's claimed sitework costs of \$4,699 per unit are within current Department guidelines. Therefore, further third party substantiation is not required.

Direct Construction Cost:

The Applicant's revised direct construction cost estimate is \$605K or 8% higher than the Underwriter's Marshall & Swift Residential Cost Handbook-derived estimate.

Interim Interest Expense:

The Underwriter reduced the Applicant's eligible interim financing fees by \$6,558 to bring the eligible interest expense down to one year of fully drawn interest expense. This results in an equivalent reduction to the Applicant's eligible basis estimate.

Contingency & Fees:

The Applicant's contractor and developer fees exceed the maximums allowed by HTC guidelines by a total of \$703 based on their own construction costs. Consequently the Applicant's eligible fees in these areas have been reduced by the same amount with the overage effectively moved to ineligible costs.

Conclusion:

The Applicant's total revised development cost is within 5% of the Underwriter's estimate; therefore, the Applicant's cost schedule will be used to determine the development's need for permanent funds and to calculate eligible basis. An eligible basis of \$15,009,820 supports annual tax credits of \$1,225,041. This figure will be compared to the Applicant's request and the tax credits calculated based on the gap in need for permanent funds to determine the recommended allocation.

FINANCING STRUCTURESOURCES & USES Number of Revisions: 2 Date of Last Applicant Revision: 9/27/2007Source: Texas Mezzanine Fund Type: Interim FinancingPrincipal: \$380,000 Interest Rate: 5.5% Fixed Amort: 24 months

Comments:

Loan application indicates interest only payments with a balloon note due once construction is completed.

Source: Korean Churches Type: Interim FinancingPrincipal: \$380,000 Interest Rate: 5.5% Fixed Amort: 24 months

Comments:

Source: Collateral Mortgage Capital Type: Interim to Permanent FinancingInterim: \$12,450,000 Interest Rate: 7.25% Fixed Amort: 24 monthsPermanent: \$7,000,000 Interest Rate: 7.00% Fixed Amort: 360 monthsSource: The Richman Group Type: SyndicationProceeds: \$11,158,884 Syndication Rate: 93% Anticipated HTC: \$ 1,200,000Amount: \$841,117 Type: Deferred Developer Fees

CONCLUSIONS

Recommended Financing Structure:

The Applicant's total development cost estimate less the permanent loan of \$7,000,000 indicates the need for \$12,000,003 in gap funds. Based on the submitted syndication terms, a tax credit allocation of \$1,290,452 annually would be required to fill this gap in financing. Of the three possible tax credit allocations, Applicant's request (\$1,200,000), the gap-driven amount (\$1,290,452), and eligible basis-derived estimate (\$1,225,041), the Applicant's request of \$1,200,000 is recommended resulting in proceeds of \$11,158,884 based on a syndication rate of 93%.

The Underwriter's recommended financing structure indicates the need to defer \$841,119 in developer fee. This amount of deferral is projected to be repayable within ten years after stabilization.

Underwriter:

Diamond Unique Thompson

Date: November 25, 2007

Director of Real Estate Analysis:

Tom Gouris

Date: November 25, 2007

Villas on Raiford, Carrollton, 9% HTC #07303

Type of Unit	Number	Bedrooms	No. of Baths	Size in SF	Rent Collected	Rent per Month	Rent per SF	Tnt-Pd Util	WS&T
TC 30%	9	1	1	727	\$296	\$2,664	\$0.41	\$77.00	\$34.00
TC 60%	39	1	1	727	671	26,169	0.92	77.00	34.00
TC 60%	24	1	1	733	671	16,104	0.92	77.00	34.00
TC 60%	18	1	1	765	671	12,078	0.88	77.00	34.00
MR	4	1	1	765	760	3,040	0.99	77.00	34.00
TC 30%	9	2	1	860	335	3,015	0.39	113.00	38.00
TC 60%	12	2	1	860	785	9,420	0.91	113.00	38.00
TC 60%	41	2	2	860	785	32,185	0.91	113.00	38.00
TC 60%	20	2	2	863	785	15,700	0.91	113.00	38.00
MR	4	2	2	863	890	3,560	1.03	113.00	38.00
TOTAL:	180			AVERAGE: 796	\$689	\$123,935	\$0.86	\$94.20	\$35.91

INCOME		Total Net Rentable Sq Ft:	143,350	TDHCA	APPLICANT	COUNTY	IREM REGION	COMPT. REGION
POTENTIAL GROSS RENT				\$1,487,220	\$1,474,140	Dallas	Dallas	3
Secondary Income	Per Unit Per Month:			32,400	32,400	\$15.00	Per Unit Per Month	
Other Support Income:				0		\$0.00	Per Unit Per Month	
POTENTIAL GROSS INCOME				\$1,519,620	\$1,506,540			
Vacancy & Collection Loss	% of Potential Gross Income:			(113,972)	(112,992)	-7.50%	of Potential Gross Income	
Employee or Other Non-Rental Units or Concessions				0				
EFFECTIVE GROSS INCOME				\$1,405,649	\$1,393,548			
EXPENSES		% OF EGI	PER UNIT			PER SQ FT	PER UNIT	% OF EGI
General & Administrative	4.46%	\$348	\$62,687	\$46,100	\$0.32	\$256	3.31%	
Management	3.90%	305	54,838	55,740	0.39	310	4.00%	
Payroll & Payroll Tax	11.52%	900	161,936	157,644	1.10	876	11.31%	
Repairs & Maintenance	6.11%	477	85,938	82,130	0.57	458	5.89%	
Utilities	3.26%	254	45,796	31,500	0.22	175	2.26%	
Water, Sewer, & Trash	4.77%	373	67,081	34,000	0.24	189	2.44%	
Property Insurance	3.02%	236	42,474	52,920	0.37	294	3.80%	
Property Tax	2.727382	1,091	196,372	225,000	1.57	1,250	16.15%	
Reserve for Replacements	3.20%	250	45,000	45,000	0.31	250	3.23%	
TDHCA Compliance Fees	0.49%	38	6,880	7,200	0.05	40	0.52%	
Other: Sup. Servs	1.07%	83	15,000	15,000	0.10	83	1.08%	
TOTAL EXPENSES	55.78%	\$4,356	\$784,002	\$752,234	\$5.25	\$4,179	53.98%	
NET OPERATING INC	44.22%	\$3,454	\$621,646	\$641,314	\$4.47	\$3,563	46.02%	
DEBT SERVICE								
First Lien Mortgage	39.76%	\$3,105	\$558,854	\$558,854	\$3.90	\$3,105	40.10%	
Additional Financing	0.00%	\$0	0		\$0.00	\$0	0.00%	
Additional Financing	0.00%	\$0	0		\$0.00	\$0	0.00%	
NET CASH FLOW	4.47%	\$349	\$62,792	\$82,460	\$0.58	\$458	5.92%	
AGGREGATE DEBT COVERAGE RATIO			1.11	1.15				
RECOMMENDED DEBT COVERAGE RATIO				1.15				

CONSTRUCTION COST		Description	Factor	% of TOTAL	PER UNIT	TDHCA	APPLICANT	PER SQ FT	PER UNIT	% of TOTAL
Acquisition Cost (site or bldg)				11.37%	\$11,444	\$2,060,000	\$2,060,000	\$14.37	\$11,444	10.84%
Off-Sites				0.00%	0	0	0	0.00	0	0.00%
Sitework				4.67%	4,699	845,826	845,826	5.90	4,699	4.45%
Direct Construction				43.14%	43,436	7,818,466	8,424,004	58.77	46,800	44.34%
Contingency		5.00%		2.39%	2,407	433,215	463,491	3.23	2,575	2.44%
Contractor's Fees		14.00%		6.69%	6,739	1,213,001	1,297,777	9.05	7,210	6.83%
Indirect Construction				3.89%	3,914	704,500	704,500	4.91	3,914	3.71%
Ineligible Costs				7.03%	7,076	1,273,693	1,273,693	8.89	7,076	6.70%
Developer's Fees		15.00%		10.21%	10,276	1,849,714	1,958,505	13.66	10,881	10.31%
Interim Financing				7.26%	7,313	1,316,420	1,316,420	9.18	7,313	6.93%
Reserves				3.37%	3,392	610,569	655,787	4.57	3,643	3.45%
TOTAL COST				100.00%	\$100,697	\$18,125,403	\$19,000,003	\$132.54	\$105,556	100.00%
Construction Cost Recap				56.88%	\$57,261	\$10,310,507	\$11,031,098	\$76.95	\$61,284	58.06%

SOURCES OF FUNDS				RECOMMENDED	
First Lien Mortgage	38.62%	\$38,889	\$7,000,000	\$7,000,000	Developer Fee Available
Additional Financing	0.00%	\$0	0	0	\$1,957,803
HTC Syndication Proceeds	61.56%	\$61,994	11,158,884	11,158,884	% of Dev. Fee Deferred
Deferred Developer Fees	4.64%	\$4,673	841,117	841,119	43%
Additional (Excess) Funds Req'd	-4.83%	(\$4,859)	(874,598)	2	15-Yr Cumulative Cash Flow
TOTAL SOURCES			\$18,125,403	\$19,000,003	\$2,489,338

MULTIFAMILY COMPARATIVE ANALYSIS (continued)

Villas on Raiford, Carrollton, 9% HTC #07303

DIRECT CONSTRUCTION COST ESTIMATE

*Marshall & Swift Residential Cost Handbook
Average Quality Multiple Residence Basis*

CATEGORY	FACTOR	UNITS/SQ FT	PER SF
Base Cost			\$49.98
Adjustments			
Exterior Wall Finish	6.08%		\$3.04
Elderly	3.00%		1.50
9-Ft. Ceilings	3.76%		1.88
Roofing			0.00
Subfloor			(1.31)
Floor Cover			2.43
Breezeways/Balconies	\$32.90	26,339	6.04
Plumbing Fixtures	\$805	195	1.10
Rough-ins	\$400	380	1.00
Built-In Appliances	\$1,850	180	2.32
Exterior Stairs	\$1,800	18	0.23
Enclosed Corridors	\$40.06		0.00
Heating/Cooling			1.90
Elevator	\$52,750.00	5	1.84
Comm &/or Aux Bldgs	\$62.25	6,040	2.62
Other: fire sprinkler	\$1.95	127,100	1.73
SUBTOTAL			76.30
Current Cost Multiplier	0.98		(1.53)
Local Multiplier	0.90		(7.63)
TOTAL DIRECT CONSTRUCTION COSTS			\$67.15
Plans, specs, survey, bid pm	3.90%		(\$2.62)
Interim Construction Interest	3.38%		(2.27)
Contractor's OH & Profit	11.50%		(7.72)
NET DIRECT CONSTRUCTION COSTS			\$54.54

PAYMENT COMPUTATION

Primary	\$7,000,000	Amort	360
Int Rate	7.00%	DCR	1.11
Secondary			
	\$0	Amort	
Int Rate	5.25%	Subtotal DCR	1.11
Additional			
	\$11,158,884	Amort	
Int Rate		Aggregate DCR	1.11

RECOMMENDED FINANCING STRUCTURE APPLICANT'S NOI:

Primary Debt Service	\$558,854
Secondary Debt Service	0
Additional Debt Service	0
NET CASH FLOW	\$82,460

Primary	\$7,000,000	Amort	360
Int Rate	7.00%	DCR	1.15
Secondary			
	\$0	Amort	0
Int Rate	5.25%	Subtotal DCR	1.15
Additional			
	\$11,158,884	Amort	0
Int Rate	0.00%	Aggregate DCR	1.15

OPERATING INCOME & EXPENSE PROFORMA: RECOMMENDED FINANCING STRUCTURE (APPLICANT'S NOI)

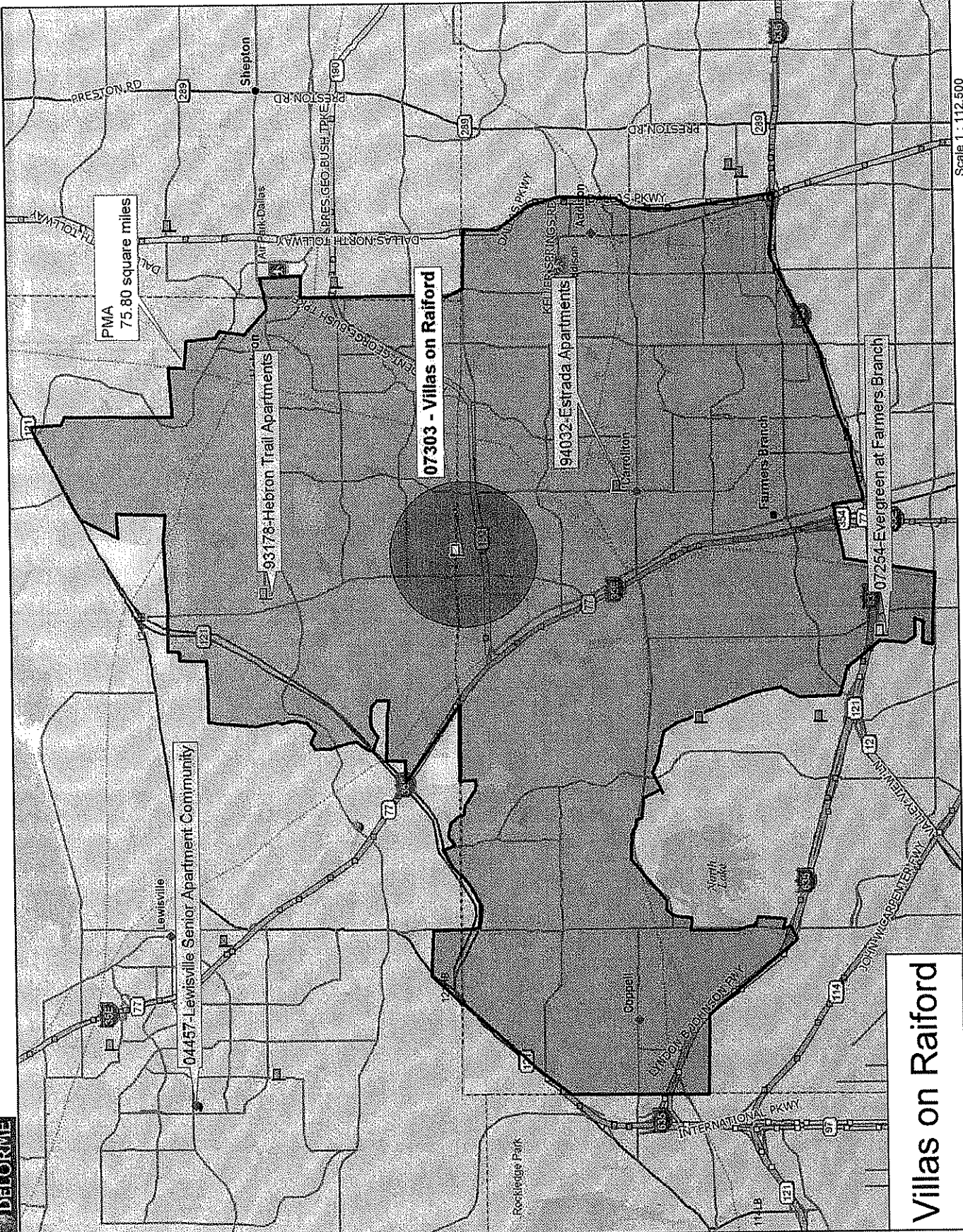
INCOME at 3.00%	YEAR 1	YEAR 2	YEAR 3	YEAR 5	YEAR 10	YEAR 15	YEAR 20	YEAR 30
POTENTIAL GROSS RENT	\$1,474,140	\$1,518,364	\$1,563,915	\$1,659,158	\$1,923,418	\$2,229,769	\$2,584,913	\$3,473,907
Secondary Income	32,400	33,372	34,373	36,466	42,275	49,008	56,814	76,353
Other Support Income:	0	0	0	0	0	0	0	0
POTENTIAL GROSS INCOME	1,506,540	1,551,736	1,598,288	1,695,624	1,965,693	2,278,777	2,641,727	3,550,260
Vacancy & Collection Loss	(112,992)	(116,380)	(119,872)	(127,172)	(147,427)	(170,908)	(198,130)	(266,270)
Employee or Other Non-Rental	0	0	0	0	0	0	0	0
EFFECTIVE GROSS INCOME	\$1,393,548	\$1,435,356	\$1,478,417	\$1,568,452	\$1,818,266	\$2,107,869	\$2,443,597	\$3,283,991
EXPENSES at 4.00%								
General & Administrative	\$46,100	\$47,944	\$49,862	\$53,930	\$65,615	\$79,830	\$97,126	\$143,770
Management	55,740	57,412	59,134	62,736	72,728	84,312	97,740	131,355
Payroll & Payroll Tax	157,644	163,950	170,508	184,421	224,377	272,988	332,132	491,637
Repairs & Maintenance	82,130	85,415	88,832	96,060	116,897	142,223	173,036	256,135
Utilities	31,500	32,760	34,070	36,851	44,834	54,548	66,366	98,238
Water, Sewer & Trash	34,000	35,360	36,774	39,775	48,393	58,877	71,833	106,034
Insurance	52,920	55,037	57,238	61,909	75,322	91,640	111,494	165,039
Property Tax	225,000	234,000	243,360	263,218	320,245	389,627	474,041	701,697
Reserve for Replacements	45,000	46,800	48,672	52,644	64,049	77,925	94,808	140,339
Other	22,200	23,088	24,012	25,971	31,598	38,444	46,773	69,235
TOTAL EXPENSES	\$752,234	\$781,766	\$812,463	\$877,536	\$1,064,056	\$1,290,414	\$1,585,149	\$2,303,478
NET OPERATING INCOME	\$641,314	\$653,590	\$665,954	\$690,917	\$754,210	\$817,454	\$878,449	\$980,513
DEBT SERVICE								
First Lien Financing	\$558,854	\$558,854	\$558,854	\$558,854	\$558,854	\$558,854	\$558,854	\$558,854
Second Lien	0	0	0	0	0	0	0	0
Other Financing	0	0	0	0	0	0	0	0
NET CASH FLOW	\$82,460	\$94,736	\$107,100	\$132,063	\$195,355	\$258,600	\$319,595	\$421,659
DEBT COVERAGE RATIO	1.15	1.17	1.19	1.24	1.35	1.46	1.57	1.75

HTC ALLOCATION ANALYSIS -Villas on Raiford, Carrollton, 9% HTC #07303

CATEGORY	APPLICANT'S TOTAL AMOUNTS	TDHCA TOTAL AMOUNTS	APPLICANT'S REHAB/NEW ELIGIBLE BASIS	TDHCA REHAB/NEW ELIGIBLE BASIS
Acquisition Cost				
Purchase of land	\$2,060,000	\$2,060,000		
Purchase of buildings				
Off-Site Improvements				
Sitework	\$845,826	\$845,826	\$845,826	\$845,826
Construction Hard Costs	\$8,424,004	\$7,818,466	\$8,424,004	\$7,818,466
Contractor Fees	\$1,297,777	\$1,213,001	\$1,297,776	\$1,213,001
Contingencies	\$463,491	\$433,215	\$463,491	\$433,215
Eligible Indirect Fees	\$704,500	\$704,500	\$704,500	\$704,500
Eligible Financing Fees	\$1,316,420	\$1,316,420	\$1,316,420	\$1,316,420
All Ineligible Costs	\$1,273,693	\$1,273,693		
Developer Fees			\$1,957,803	
Developer Fees	\$1,958,505	\$1,849,714		\$1,849,714
Development Reserves	\$655,787	\$610,569		
TOTAL DEVELOPMENT COSTS	\$19,000,003	\$18,125,403	\$15,009,820	\$14,181,141

Deduct from Basis:			
All grant proceeds used to finance costs in eligible basis			
B.M.R. loans used to finance cost in eligible basis			
Non-qualified non-recourse financing			
Non-qualified portion of higher quality units [42(d)(3)]			
Historic Credits (on residential portion only)			
TOTAL ELIGIBLE BASIS		\$15,009,820	\$14,181,141
High Cost Area Adjustment		100%	100%
TOTAL ADJUSTED BASIS		\$15,009,820	\$14,181,141
Applicable Fraction		95%	95%
TOTAL QUALIFIED BASIS		\$14,327,965	\$13,536,931
Applicable Percentage		8.55%	8.55%
TOTAL AMOUNT OF TAX CREDITS		\$1,225,041	\$1,157,408

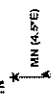
Syndication Proceeds	0.9299	\$11,391,742	\$10,762,814
Total Tax Credits (Eligible Basis Method)		\$1,225,041	\$1,157,408
Syndication Proceeds		\$11,391,742	\$10,762,814
Requested Tax Credits		\$1,200,000	
Syndication Proceeds		\$11,158,884	
Gap of Syndication Proceeds Needed		\$12,000,003	
Total Tax Credits (Gap Method)		\$1,290,452	



PMA
75.80 square miles

Villas on Raiford

Scale 1 : 112,500



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DUE DILIGENCE AND CLOSING REQUIREMENTS

The following items must be provided to the Department at least thirty (30) days in advance of Closing, in order to facilitate the Department's preparation of Closing documents. Copies should be provided to the Department staff member(s) identified as the closing agent for the transaction and to the escrow agent at the title company, to the extent noted. Items must be submitted to the Department via the FTP electronic system, unless otherwise impermissible.

A. Final construction loan approval, as evidenced by a valid commitment from the construction lender or such other evidence as may be permitted by the Department.

B. Updates and changes from the initial Tax Credit application, which are not otherwise included in the Exchange Application. This includes any changes resulting from an increase or decrease in the aggregate Development Costs and financing committed for the Development. Any such updates or conditions shall be submitted to the Department using the forms in the 2009 Uniform Application (or any supplements thereto) including, without limitation, the following:

- (i) Activity Overview [Vol. 1, Tab 1, Part A];
- (ii) Rent Schedule [Vol. 1, Tab 2, Parts B &C];
- (iii) Annual Operating Expenses [Vol. 1, Tab 2, Part D];
- (iv) 30-Year Operating Proforma [Vol. 1, Tab 2, Part D];
- (v) Development Cost Schedule [Vol. 1, Tab 3, Part A];
- (vi) Offsite Cost Breakdown [Vol. 1, Tab 3, Part B];
- (vii) Site Work Costs [Vol. 1, Tab 3, Part C];
- (viii) Summary of Sources and Uses of Costs [Vol. 1, Tab 4, Part A] Note: This must be consistent with the fully executed Notice of Acceptance to Return Credits and Request Exchange Funds in Connection with the Section 1602 Tax Credit Exchange Program;
- (ix) Financing Participants [Vol. 1, Tab 4, Part B], Financing Narrative, executed grant/subsidy, and updated construction loan commitment;
- (x) Previous Participation Exhibits [Vol. 1, Tab 5, Parts A-E];
- (xi) Tax Assessor valuation and tax rates by taxing jurisdiction;
- (xii) Evidence of Site Control;
- (xiii) Acquisition and/or Rehabilitation Information [Vol. 3, Tab 6]; and

- (xiv) Updated Property Condition Assessment meeting the requirements of 10 TAC § 1.36 (if applicable).
- C. Owner/Contractor Agreement (executed or in substantially final form)
 - D. Owner/Architect Agreement (executed or in substantially final form)
 - E. Texas Identification Number (TIN – AP-152), Vendor Direct Deposit Authorization (74-176) and TDHCA Housing Contract System Access Request Form
 - F. Resolutions of Development Owner, indicating authority to obtain the Exchange Program Funds and parties authorized to execute the Closing documents.
 - G. Evidence of any changes to the zoning since the initial Tax Credit application.
 - H. Updated evidence of proof of utilities available to the Development Site.
 - I. Any updates to the Phase I Environmental Site Assessment previously submitted to the Department, and if necessary, an updated reliance letter.
 - J. An updated organizational chart for the Development Owner or Developer, to the extent ownership of such Entities (including percentage of ownership therein) has changed from the organizational chart included in the initial Tax Credit application.
 - K. Updated title commitment for owner's policy of title insurance, with copies of exceptions and a mortgagee's policy with waiver of arbitration, in the name of the Department to include the full amount of the Subaward. (Note: The Department should receive a copy of such title commitment each time it is updated prior to Closing.)
 - L. Updated survey for the Development Site, with certification to the Department. The updated survey must include floodplain designation and, if the Development Site is improved, must include all improvements. A full-sized copy and PDF version should be submitted to the Department. (Note. The Department should receive a copy of any updates to the survey each time it is updated prior to Closing.)
 - M. To the extent the Development Owner has closed any financing for the Development prior to Closing (other than financing that will be paid off at Closing), copies of executed versions of such financing documents.
 - N. Evidence of the Good Faith Effort.

The following items must be provided to the Department prior to or concurrent with Closing. Copies should be provided to the Department staff member(s) identified as the closing agent for the transaction and to the escrow agent at the title company, to the extent

noted. Items must be submitted to the Department via the FTP electronic system, unless otherwise impermissible or so noted.

- A. Executed copy of Owner/Contractor Agreement (if not previously provided)
- B. Owner/Architect Agreement (if not previously provided)
- C. Final Plans and Specifications.
- D. Copies of the final building permits authorizing commencement of construction or a "will issue" letter.
- E. An Officer's Certificate of the Development Owner, including certified copies of the organizational documents of the Development Owner as in effect on the date of Closing and incumbency.
- F. Evidence of Department approval of any change in ownership in the Development Owner or Developer (including percentage of ownership therein), to the extent required.
- G. Pro forma owner's policy of title insurance, showing the lien to be imposed by the Recapture Mortgage.
- H. Final plat for the Development Site, to the extent applicable.
- I. Copies of all other financing documents for the Development, in substantially final form.
- J. Executed copies of the Security Instruments, Option Agreement, Recapture Mortgage, LURA, Subordination Agreement and Disbursement Agreement (Note: These documents are not to be submitted electronically. Documents must be submitted with an original, notarized signature. If the document is to be recorded a certified copy of such recorded document is to be submitted to the Department).
- K. Copy of Amended and Restated Limited Partnership Agreement or Limited Liability Company Operating Agreement as required in Section 5.3 E and Section 5.3F of this Agreement.
- L. Evidence of insurance in the form of Certificates of Insurance, referencing the Development Owner or the Development, including contact information for the broker or agent, and listing the Department as an additional insured or certificate holder, as follows:

Prior to or during construction:

- (i) Commercial general liability insurance for the Development Owner, listing the Department as an additional insured, in an amount equal to the lesser of \$5,000,000 or the amount of the Subaward.
- (ii) For the Architect, evidence of errors and omissions insurance, in amounts acceptable to the Department.

(iii) General Contractor's commercial general liability, builder's risk, and workers compensation insurance (must be non-reporting type), in amounts acceptable to the Department.

Following the Construction Completion Date:

(i) Commercial general liability insurance for the Development Owner, listing the Department as an additional insured, in an amount equal to the lesser of \$5,000,000 or the amount of the Subaward.

(ii) Rental interruption insurance in an amount not less than the equivalent of six (6) months' gross rental income.

(iii) Property and casualty insurance, issued on a replacement cost basis, and insuring the full replacement cost of the Development.

(iv) Special hazard or floodplain insurance, as applicable.

(v) For the Property Manager, evidence of commercial general liability insurance and fidelity bond, in amounts acceptable to the Department.

All insurance is to be furnished through a company with a rating of at least "A-" by Standard & Poor's Insurance Solvency Review and/or at least "A, XI" by Best's Insurance Guide.

N. Special Provisions

(i) Receipt, review, and acceptance, by cost certification of documentation that the vendors lien from the seller listed in Schedule B of the Title Commitment has been released or resolved without adversely impacting the development.

(ii) Should the terms and rates of the proposed financing change, the transaction should be re-evaluated and an adjustment to the credit allocation amount may be warranted.

O. Opinion of Development Owner's Legal Counsel

DRAW DOCUMENTS

All draws will be processed electronically through the TDHCA Contract System. All draws will be processed by TDHCA and electronically relayed to the Texas Comptroller of Public Accounts Office for disbursement. The Development Owner must have the following items completed prior to being able to request funds:

1. Application for Texas Identification Number (TIN) – Texas Comptroller of Public Accounts: <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf> - complete and upload to the FTP account
2. Vendor Direct Deposit Authorization Form – Texas Comptroller of Public Accounts: <http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf> - complete, upload to the FTP account and submit original signature to TDHCA
3. TDHCA Contract System Access Request Form (Required in order to access requisition system): http://www.tdhca.state.tx.us/home-division/forms/docs/0201-contract_Sys_Access.doc - complete and upload to FTP account

An executed requisition form and back-up documentation must be attached electronically to each draw request within the TDHCA Contract System. Such requisition form will be provided by the Department.

Exhibit E

LAND USE RESTRICTION AGREEMENT

[attached behind]

(TDHCA WILL ATTACH FINAL VERSION)

SECTION 42 COMPLIANCE FORM

(As found at <http://www.tdhca.state.tx.us/pmcdocs/03-FHSR-B-USR-040326.pdf>)

(For Example Purposes Only – Not to be completed prior to Closing)

QUARTERLY FINANCIAL SUMMARY
(For Example Purposes Only – Not to be completed prior to Closing)

Development Name

Was this property occupied during the last fiscal quarter?.... Yes No

Explanation/Comment:

RENT

Unit Type	Set Aside	Units	Bed Rooms	Baths	Square Feet	Rental Rate	Tenant Utilities	Gross Total

INCOME

Secondary Income

Average secondary income per unit per month

Describe secondary income

Non-tenant income

Other non-rental income

Describe non-rental income

Vacancy and collection loss

Rental concessions

Loss from non-income units

Employee unit discounts

EFFECTIVE GROSS INCOME

POTENTIAL GROSS INCOME

POTENTIAL GROSS RENTAL INCOME

EXPENSE

Accounting.....
Advertising.....
Legal and consulting.....
Leased equipment.....
Postage and office supplies.....
Telephone.....
License, meetings, dues.....
Other office expenses.....
Miscellaneous.....
Describe.....

Total General and Administrative Expenses

Management fees.....
Percent of effective gross income.....
Total Management fees.....

Management.....
Maintenance.....
Other.....
Describe.....

Total Payroll, Payroll Tax and Employee Benefits

Elevator.....
Exterminating.....
Grounds.....
Make-ready.....
Repairs.....
Pool.....
Other.....
Describe.....

Total Repairs and Maintenance

Electrical.....
Natural gas.....
Other fuel (heat/water).....
Garbage/trash.....
Water and sewer.....
Other.....

Describe
.....

Total Utilities

Annual property insurance premiums (all types)

Rate per net rentable square foot

Real property tax

Assessed value

Tax rate per 100 dollars of assessment

Personal property tax

Describe

Reserve for replacements

Reserve per unit per month

Cable TV

Support services contract fees

Compliance fees

Security fees

Other

Describe

Total Other Expenses

TOTAL EXPENSES

Debt service

Debt coverage ratio

Capital improvements

Cash Flow

Submission Information

Submitted by

Signature

Date

Title

QUARTERLY PROGRESS REPORT

Under Section 1602 of the American Recovery and Reinvestment Act of 2009 (Section 1602), state housing credit agencies are eligible to receive Section 1602 Payments to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credit Allocation for 2009. The state housing credit agency uses the funds to make subawards. The Section 1602 program temporarily fills the gap left by a diminished demand for low-income housing tax credits. The payments result in the creation and retention of jobs and in an increase in the affordable housing supply.

The Recovery Act encourages accountability and transparency in the use of funds. This quarterly progress report is required. To complete the quarterly progress report, enter information for each subaward and submit the report to teresa.shell@tdhca.state.tx.us and lisa.fehr@tdhca.state.tx.us within 5 business days after the end of each quarter. The report is cumulative. Quarters end on March 31, June 30, September 30 and December 31.

The following definitions are to be used to complete the report:

Date of subaward – date on which the state agency executed a legally binding written agreement with the entity receiving a subaward.

Amount of subaward – dollar amount (rounded to the nearest dollar) of the subaward.

Amount of subaward – dollar amount (rounded to the nearest dollar) of the subaward.

Recipient entity EIN – nine digit employee identification number of subawardee. Format: xx-xxxxxxx. If subawardee does not have an EIN, do not enter a social security number.

Name of project – name by which the housing development is commonly known.

BIN – one or more building identification numbers. If the building has low income housing tax credits, use the same number or numbers.

Brief description of project – narrative summary of the project's characteristics, such as information about the building design, occupants, energy efficiency, location, amenities, purpose, any unique features.

Project completion status – condition of the development at the time of subaward. Choose from: NB for not begun, ST for stalled, UC for under construction, CN for completed not occupied, CO for completed and occupied.

Project city/county – name of city in which the development is located; or name of county in which the development is located, if the development is in an unincorporated area.

Project state – name of state in which the development is located.

Project zip code – zip code in which the development is located.

Number of construction jobs to be created or retained – estimated number of full-time equivalent jobs directly involved in constructing or rehabilitating the development. Direct jobs are those created or retained in the project, not by suppliers who make the materials used in the project.

Number of non-construction jobs to be created or retained - estimated number of full-time equivalent jobs directly involved in operating the housing. Direct jobs are those created or retained in the project, not by suppliers who make the materials used in the project.

Number of total housing units newly constructed – number of housing units to be built at the site as a result of the subaward.

Number of total housing units rehabilitated – number of housing units to be rehabilitated at the site as a result of the subaward.

Number of low-income housing units newly constructed – of the housing units to be built at the site, the number to be occupied by qualified low-income families or individuals.

Number of low-income housing units rehabilitated - of the housing units to be rehabilitated at the site, the number to be occupied by qualified low-income families or individuals.

QUARTERLY PROGRESS REPORT	
Reporting Contact Name	Terri L. Anderson
Title	Anderson Capital, LLC, Consultant
Contact Phone Number	972-567-4630
Contact Email	Terri_L_Anderson@msn.com
Name of Recipient Entity (Development Owner):	Villas on Raiford Carrollton Senior Housing, LLC
Name of Project:	Villas on Raiford
BIN:	TX-07-30301 through TX-07-30399; and TX-08-09601 through TX-08-09699
Recipient Entity EIN	26-1536014
Amount of Subaward:	<u>\$10,542,031.00</u>
Date of Subaward:	<i>SEPTEMBER 1, 2010</i>
Brief Description of Development:	<p>Villas on Raiford is proposed new construction of 180 units. The new building construction will consist of wood frame with 76% masonry and 24% hardy plank exterior. 86% of the units will have rents affordable to seniors earning 60% or below of the area median income of the City of Carrollton (AMI), 10% of the units will have rents affordable to seniors earning 30% or less of the AMI, and 4% of the units will be market rate. The site is located in Census Tract 137.19. Tenant Services to be provided include the following: transportation, basic adult education, counseling services, credit counseling, financial planning courses, health screening, and health and nutritional courses. The following amenities are anticipated to be offered at the property: barbeque grills and picnic tables, a community dining room with full or warning kitchen, controlled gate access, equipped business center, full perimeter fencing,</p>

	furnished community room, furnished fitness center, a health screening room, a public telephone accessible 24 hours a day, a secured entry, an elevator, a senior activity room, and a service coordinator office in addition to the leasing office.
Location of Development (City, County, State and Zip Code):	Carrollton, Dallas and Denton County, TX 75007
Project Completion Status	NB; ST
Number of Construction Jobs to be Created or Retained:	250
Number of Non-Construction Jobs Created or Retained:	10
Number of Non-Construction Jobs Retained:	5
Number of Total Housing Units Newly Constructed:	180
Number of Total Housing Units Rehabilitated:	n/a
Number of Low-Income Housing Units Newly Constructed:	172
Number of Low-Income Housing Units Rehabilitated:	n/a

OWNER

VILLAS ON RAIKORD CARROLLTON
SENIOR HOUSING, LLC,

a Texas limited liability company

By: Villas on Raiford, LLC,
a Texas limited liability company,

its Manager

By: ,

Name: Chan Il Pak,
Title: Manager

MORTGAGE LOANS

Mortgage Lender Dougherty Mortgage, LLC
Name

Contact Name: Jeffrey Rogers, Senior Vice President

Mailing Address: 16775 Addison Road, Suite 470

City, State, Zip Code: Addison, TX 75001

Email: jrogers@doughertymarkets.com

Phone: 972-735-2817

Fax: 972-735-2801

Amount: Approx. \$9,054,700.00

Interest Rate: Approx. 5.45%

Annual Payment: TBD

Term: 480

Other: 0.45 basis point MIP annually

Mortgage Lender
Name

Contact Name:

Mailing Address:

City, State, Zip Code:

Email:

Phone:

Fax:

Amount:


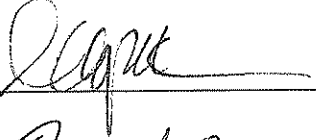

Interest Rate:

Annual Payment:

Term:

Other:

AUTHORIZED OFFICERS OF OWNER

<u>NAME</u>	<u>TITLE</u>	<u>SPECIMEN SIGNATURE</u>
VILLAS ON RAIFORD, LLC	MANAGER OF OWNER	
CHAN IL PAK	PRESIDENT/MANAGER OF VILLAS ON RAIFORD, LLC	
TERRI L. ANDERSON	SECRETARY/TREASURER	

SUBAWARD AGREEMENT SUMMARY

Name of Development Owner

VILLAS ON RAIFORD CARROLLTON

SENIOR HOUSING, LLC

Development Address

Street: 1100 Raiford Road
City, State, Zip Code: Carrollton, TX 75007

Contact Information for Development Owner

Name: Chan Il Pak/AD Villarai, LLC
Mailing Address: 11445 Emerald Street, Suite 105
City, State, Zip Code: Dallas, TX 75229
Email: Terri_L_Anderson@msn.com
Phone: 972.567.4630
Fax: 972.462.8715

Contact Information for Development Owner Document Copies

Name: John C. Shackelford
Mailing Address: 3333 Lee Parkway, Tenth Floor
City, State, Zip Code: Dallas, TX 75219
Email: jshack@shacklaw.net
Phone: 214-780-1400
Fax: 214-780-1401

Tax Credit Exchange Award Pool

- 2007
- 2008
- 2009

Initials CPW
lp

2007 and 2008 Award Pool

Closing..... May 30, 2010
 Commencement of Substantial Construction July 31, 2010
 Documentation of 10% Test..... July 31, 2010
 50% construction completion within 8 months of Closing No later than
 February 27, 2011
 Placed In-Service Date July 31, 2011

2009 Award Pool

Closing..... March 31, 2010
 Documentation of 10% Test..... June 30, 2010
 Commencement of Substantial Construction December 1, 2010
 50% construction completion within 8 months of Closing No later than
 November 30, 2010
 Placed In-Service Date December 31, 2011
 Qualified Non-Profit Organization Yes No

This Subaward is being made pursuant to the Department's set-aside for "qualified nonprofit organizations" within the meaning of Section 42(h)(5)(C) of the Code. Throughout the Compliance Period applicable to the Development under the Code and the Declaration, such a qualified nonprofit organization shall own an interest in the Development, have "control" of the Development pursuant to Section 49.7(b)(1) of the QAP, and shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Development. The qualified nonprofit organization designated to meet such obligation with respect to the Development is N/A. As of the date hereof, and based on representations, covenants, warranties of the Owner and other information previously submitted to the Department by the Owner, the Department has determined such nonprofit organization not to be "affiliated with or controlled by a for-profit organization" for purposes of Section 42(h)(5)(C)(ii) of the Code. In the event that any such representations, covenants, warranties and/or information is determined to have been false, materially misstated or materially misleading when made, or if subsequent events render such representations, covenants, warranties and/or information false or misleading in any material way, then the Department, at its option, may determine the issue of control with respect to Section 42(h)(5)(C)(ii), and such determination shall be grounds for cancellation of this Subaward and any and all such other action as the Department may deem appropriate.

Initials Row


At-risk Development Yes No

Rural Development Yes No

Proration of units that must qualify as LIH during Compliance and Extended Use Period

Total Number of Units.....180
Affordability percentage.....95.56%
Total Number of Low Income Units172

Credit Price Ceiling Selection:

Base - 0% of 30% AMGI units \$0.77
10% - additional 30% AMGI units \$0.81
20% - additional 30% AMGI units \$0.85

Tax Credit Exchange Award Amount \$10,542,031.00

Cannot exceed 85% of the amount of a building's Eligible Basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code) and, also for this purpose, Eligible Basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B).

Special Reserve Account and Option Agreement Participation Percentage (based on additional 30% AMGI units):

Selection: Net Cash Flow Contribution Percentage:
Base - 0% of 30% AMGI units.....20%
10% - additional 30% AMGI units.....15%
20% - additional 30% AMGI units.....10%

Asset Management Fee (Per unit, per year).....TBD_____

Type of Development New Construction
 Rehabilitation
Target Population Families
 Seniors
 Other _____

Building Identification Numbers (BINs) TX#: 07-30301 and 08-09601
through TX # 07-30399 and 08-09699, respectively. :

Initials RB

g

CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND
COOPERATIVE AGREEMENTS

The undersigned certified, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any Person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any Person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Development Owner: Villas on Raiford Carrollton Senior Housing, LLC

Signed:  DATE: _____

Name: Chan II Pak

Title: Manager

APPLICABLE LEGAL REQUIREMENTS

The Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order II063, as amended by Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR, Part 107

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR, Part 1; Executive Order 11063, as amended by Executive Order 12259, and 24 CFR part 107, “Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063”

The Age Discrimination Act of 1975 (42 U.S.C. 610107) and implementing regulations at 24 CFR, Part 146, “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance”, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR, Part 8; Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR, Chapter 60

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C., Section 794) and implementing regulations at 24 CFR Part 8, “Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development”

Note: For new construction developments and developments undergoing substantial rehabilitation, five percent of the units must be accessible to persons with mobility impairments and two percent must be accessible to persons with hearing or vision impairments (See 24 CFR 8.22). Substantial rehabilitation for a multifamily rental development is defined in 24 CFR 8.23 as a development with 15 or more units for which the alterations would equal more than seventy-five percent (75%) of the replacement cost of the facility. For developments in which the rehabilitation is not substantial, the Section 504 provisions are applicable only to the maximum extent feasible. (See 24 CFR 8.23).

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Exhibits

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- Exhibit B – Development Budget
- Exhibit C – Due Diligence and Closing Requirements
- Exhibit D – Draw Documents
- Exhibit E – LURA
- Exhibit F – Section 42 Compliance Form
- Exhibit G – Quarterly Financial Summary
- Exhibit H – Quarterly Progress Report
- Exhibit I – Mortgage Loans
- Exhibit J – Authorized Officers of Owner
- Exhibit K – Subaward Agreement Summary
- Exhibit L – Certification Regarding Lobbying
- Exhibit M – Applicable Legal Requirements



Real Estate Analysis Division
2007 Real Estate Analysis Rules

§1.31 GENERAL PROVISIONS 1
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1 **§1.31 General Provisions**

2 (a) **Purpose.** The Rules in this subchapter apply to the underwriting, market analysis, appraisal,
 3 environmental site assessment, property condition assessment, and reserve for replacement standards
 4 employed by the Texas Department of Housing and Community Affairs (the "Department" or "TDHCA").
 5 This chapter provides rules for the underwriting review of an affordable housing development's financial
 6 feasibility and economic viability that ensures the most efficient allocation of resources while promoting
 7 and preserving the public interest in ensuring the long-term health of the Department's portfolio. In
 8 addition, this chapter guides the underwriting staff in making recommendations to the Executive Award
 9 and Review Advisory Committee ("the Committee"), Executive Director, and TDHCA Governing Board
 10 ("the Board") to help ensure procedural consistency in the determination of Development feasibility
 11 (§§2306.0661(f) and 2306.6710(d), Texas Government Code). Due to the unique characteristics of each
 12 development the interpretation of the rules and guidelines described in this subchapter is subject to the
 13 discretion of the Department and final determination by the Board.

14 (b) **Definitions.** Many of the terms used in this subchapter are defined in the Department's Housing
 15 Tax Credit Program Qualified Allocation Plan and Rules, known as the "QAP", as proposed. Those terms
 16 that are not defined in the QAP or which may have another meaning when used in subchapter B of this
 17 title, shall have the meanings set forth in this subsection unless the context clearly indicates otherwise.

18 (1) **Affordable Housing**--Housing that has been funded through one or more of the Department's
 19 programs or other local, state or federal programs or has at least one unit that is restricted in the rent
 20 that can be charged either by a Land Use Restriction Agreement or other form of Deed Restriction.

21 (2) **Bank Trustee**--A bank authorized to do business in this state, with the power to act as
 22 trustee.

23 (3) **Cash Flow**--The funds available from operations after all expenses and debt service required
 24 to be paid has been considered.

25 (4) **Credit Underwriting Analysis Report**--Sometimes referred to as the "Report." A decision
 26 making tool used by the Department and Board containing a synopsis and reconciliation of the
 27 application information submitted by the Applicant.

28 (5) **Comparable Unit**--A Unit, when compared to the subject Unit, similar in overall condition,
 29 unit amenities, utility structure, and common amenities, and

30 (A) for purposes of calculating the inclusive capture rate targets the same population and is
 31 likely to draw from the same demand pool;

32 (B) for purposes of estimating the Restricted Market Rent targets the same population and is
 33 similar in net rentable square footage and number of bedrooms; or

34 (C) for purposes of estimating the subject Unit market rent does not have any income or rent
 35 restrictions and is similar in net rentable square footage and number of bedrooms.

36 (6) **Contract Rent**--Maximum Rent Limits based upon current and executed rental assistance
 37 contract(s), typically with a federal, state or local governmental agency.

2007 Real Estate Analysis Rules

38 (7) **DCR--Debt Coverage Ratio.** Sometimes referred to as the "Debt Coverage" or "Debt Service
39 Coverage." A measure of the number of times loan principal and interest are covered by Net Operating
40 Income.

41 (8) **Development--**Sometimes referred to as the "Subject Development." Multi-unit residential
42 housing that meets the affordability requirements for and requests or has received funds from one or
43 more of the Department's sources of funds.

44 (9) **EGI--Effective Gross Income.** The sum total of all sources of anticipated or actual income for
45 a rental Development less vacancy and collection loss, leasing concessions, and rental income from
46 employee-occupied units that is not anticipated to be charged or collected.

47 (10) **ESA--Environmental Site Assessment.** An environmental report that conforms with the
48 Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard
49 Designation: E 1527) and conducted in accordance with the Department's Environmental Site Assessment
50 Rules and Guidelines in §1.35 of this subchapter as it relates to a specific Development.

51 (11) **First Lien Lender--**A lender whose lien has first priority.

52 (12) **Gross Program Rent--**Sometimes called the "Program Rents." Maximum Rent Limits based
53 upon the tables promulgated by the Department's division responsible for compliance by program and by
54 county or Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA").

55 (13) **Market Analysis--**Sometimes referred to as "Market Study." An evaluation of the economic
56 conditions of supply, demand and rental rates or pricing conducted in accordance with the Department's
57 Market Analysis Rules and Guidelines in §1.33 of this subchapter as it relates to a specific Development.

58 (14) **Market Rent--**The unrestricted rent concluded by the Market Analyst for a particular unit
59 type and size after adjustments are made to rents charged by owners of Comparable Units.

60 (15) **NOI--Net Operating Income.** The income remaining after all operating expenses, including
61 replacement reserves and taxes have been paid.

62 (16) **Primary Market--**Sometimes referred to as "Primary Market Area" or "Submarket" or "PMA".
63 The area defined by the Qualified Market Analyst as described in §1.33(d)(8) of this title from which a
64 proposed or existing Development is most likely to draw the majority of its prospective tenants or
65 homebuyers.

66 (17) **PCA--Property Condition Assessment.** Sometimes referred to as "Physical Needs Assessment,"
67 "Project Capital Needs Assessments," "Property Condition Report," or "Property Work Write-Up." An
68 evaluation of the physical condition of the existing property and evaluation of the cost of rehabilitation
69 conducted in accordance with the Department's Property Condition Assessment Rules and Guidelines in
70 §1.36 of this title as it relates to a specific Development.

71 (18) **Rent Over-Burdened Households--**Non-elderly households paying more than 35% of gross
72 income towards total housing expenses (unit rent plus utilities) and elderly households paying more than
73 40% of gross income towards total housing expenses.

74 (19) **Reserve Account--**An individual account:

75 (A) Created to fund any necessary repairs for a multifamily rental housing development; and

76 (B) Maintained by a First Lien Lender or Bank Trustee.

77 (20) **Restricted Market Rent--**The restricted rent concluded by the Market Analyst for a
78 particular unit type and size after adjustments are made to rents charged by owners of Comparable
79 Units with the same rent and income restrictions.

80 (21) **Secondary Market--**Sometimes referred to as "Secondary Market Area". The area defined by
81 the Qualified Market Analyst as described in §1.33(d)(7) of this title.

82 (22) **Supportive Housing--**Sometimes referred to as "Transitional Housing." Rental housing
83 intended solely for occupancy by individuals or households transitioning from homelessness or abusive
84 situations to permanent housing and typically consisting primarily of efficiency units.

85 (23) **Sustaining Occupancy--**The occupancy level at which rental income plus secondary income
86 is equal to all operating expenses and mandatory debt service requirements for a Development.

87 (24) **TDHCA Operating Expense Database--**Sometimes referred to as "TDHCA Database." A
88 consolidation of recent actual operating expense information collected through the Department's Annual
89 Owner Financial Certification process and published on the Department's web site.

90 (25) **Underwriter--**The author(s), as evidenced by signature, of the Credit Underwriting Analysis
91 Report.

92 (26) **Unstabilized Development--** A Development with Comparable Units that has been approved
93 for funding by the TDHCA Board or is currently under construction or has not maintained a 90%
94 occupancy level for at least 12 consecutive months following construction completion.

95 (27) **Utility Allowance--**The estimate of tenant-paid utilities, based either on the most current
96 HUD Form 52667, "Section 8, Existing Housing Allowance for Tenant-Furnished Utilities and Other

97 Services," provided by the local entity responsible for administering the HUD Section 8 program with
98 most direct jurisdiction over the majority of the buildings existing or a documented estimate from the
99 utility provider proposed in the Application. Documentation from the local utility provider to support an
100 alternative calculation can be used to justify alternative Utility Allowance conclusions but must be
101 specific to the Subject Development and consistent with the building plans provided.

102 (28) **Work Out Development**--A financially distressed Development seeking a change in the
103 terms of Department funding or program restrictions based upon market changes.

104 (c) **Appeals.** Certain programs contain express appeal options. Where not indicated, 10 Tex. Admin.
105 Code §§1.7 and 1.8 include general appeal procedures. In addition, the Department encourages the use
106 of Alternative Dispute Resolution methods as outlined in 10 TAC §1.17.
107

108 **§1.32 Underwriting Rules and Guidelines**

109 (a) **General Provisions.** The Department Governing Board has authorized the development of these
110 rules under its authority under §2306.148, Texas Government Code. The rules provide a mechanism to
111 produce consistent information in the form of an Underwriting Report to provide interested parties
112 information the Board relies upon in balancing the desire to assist as many Texans as possible by
113 providing no more financing than necessary and have independent verification that Developments are
114 economically feasible. The Report generated in no way guarantees or purports to warrant the actual
115 performance, feasibility, or viability of the Development by the Department.

116 (b) **Report Contents.** The Report provides an organized and consistent synopsis and reconciliation of
117 the application information submitted by the Applicant.

118 (c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award
119 of funds or allocation of Tax Credits based on the lesser amount calculated by the program limit method
120 (if applicable), gap/DCR method, or the amount requested by the Applicant as further described in
121 paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

122 (1) **Program Limit Method.** For Developments requesting Housing Tax Credits, this method is
123 based upon calculation of Eligible Basis after applying all cost verification measures and program limits
124 as described in this section. The Applicable Percentage used is as defined in the QAP. For Developments
125 requesting funding through a Department program other than Housing Tax Credits, this method is based
126 upon calculation of the funding limit based on current program rules at the time of underwriting.

127 (2) **Gap/DCR Method.** This method evaluates the amount of funds needed to fill the gap created
128 by total development cost less total non-Department-sourced funds or Tax Credits. In making this
129 determination, the Underwriter resizes any anticipated deferred developer fee down to zero before
130 reducing the amount of Department funds or Tax Credits. In the case of Housing Tax Credits, the
131 syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to
132 determine the amount of Tax Credits. In making this determination, the Department adjusts the
133 permanent loan amount and/or any Department-sourced loans, as necessary, such that it conforms to
134 the DCR standards described in this section.

135 (3) **The Amount Requested.** The amount of funds that is requested by the Applicant as reflected
136 in the application documentation.

137 (d) **Operating Feasibility.** The operating financial feasibility of Developments funded by the
138 Department is tested by adding total income sources and subtracting vacancy and collection losses and
139 operating expenses to determine Net Operating Income. This Net Operating Income is divided by the
140 annual debt service to determine the Debt Coverage Ratio. The Underwriter characterizes a
141 Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet
142 the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may choose to
143 make adjustments to the financing structure, such as lowering the debt and increasing the deferred
144 developer fee that could result in a re-characterization of the Development as feasible based upon
145 specific conditions set forth in the Report.

146 (1) **Income.** In determining the Year 1 proforma, the Underwriter evaluates the
147 reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit
148 based on contract, program and market factors. Miscellaneous income and vacancy and collection loss
149 limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-
150 documented support is provided.

151 (A) **Rental Income.** The Program Rent less Utility Allowances or Market Rent or Restricted
152 Market Rent or Contract Rent is utilized by the Underwriter in calculating the rental income for
153 comparison to the Applicant's estimate in the application. Where multiple programs are funding the
154 same units, Contract Rents are used, if applicable. If Contract Rents do not apply, the lowest Program

155 Rents less Utility Allowance ("net Program Rent") or Market Rents or Restricted Market Rent, as
156 determined by the Market Analysis that are lower than the net Program Rents, are utilized.
157 (i) **Market Rents.** The Underwriter reviews the attribute adjustment matrix of
158 Comparable Units by unit size provided by the Market Analyst and determines if the adjustments and
159 conclusions made are reasoned and well documented. The Underwriter uses the Market Analyst's
160 conclusion of adjusted Market Rent by unit, as long as the proposed Market Rent is reasonably justified
161 and does not exceed the highest existing unadjusted market comparable rent. Random checks of the
162 validity of the Market Rents may include direct contact with the comparable properties. The Market
163 Analyst's attribute adjustment matrix should include, at a minimum, adjustments for location, size,
164 amenities, and concessions as more fully described in §1.33 of this title.
165 (ii) **Restricted Market Rent.** The Underwriter reviews the attribute adjustment matrix of
166 Comparable Units by unit size and income and rent restrictions provided by the Market Analyst and
167 determines if the adjustments and conclusions made are reasoned and well documented. The
168 Underwriter uses the Market Analyst's conclusion of adjusted Restricted Market Rent by unit, as long as
169 the proposed Restricted Market Rent is reasonably justified and does not exceed the highest existing
170 unadjusted market comparable restricted rent. Random checks of the validity of the Restricted Market
171 Rents may include direct contact with the comparable properties. The Market Analyst's Attribute
172 Adjustment Matrix should include, at a minimum, adjustments for location, size, amenities, and
173 concessions as more fully described in §1.33 of this title.
174 (iii) **Program Rents less Utility Allowance.** The Underwriter reviews the Applicant's
175 proposed rent schedule and determines if it is consistent with the representations made in the
176 remainder of the application. The Underwriter uses the Program Rents as promulgated by the
177 Department's division responsible for compliance for the year that is most current at the time the
178 underwriting begins. When underwriting for a simultaneously funded competitive round, all of the
179 applications are underwritten with the rents promulgated for the same year. Program Rents are reduced
180 by the Utility Allowance. The Utility Allowance figures used are determined based upon what is
181 identified in the application by the Applicant as being a utility cost paid by the tenant and upon other
182 consistent documentation provided in the application.
183 (I) Units must be individually metered for all utility costs to be paid by the tenant.
184 (II) Gas utilities are verified on the building plans and elsewhere in the application
185 when applicable.
186 (III) Trash allowances paid by the tenant are rare and only considered when the
187 building plans allow for individual exterior receptacles.
188 (IV) Refrigerator and range allowances are not considered part of the tenant-paid
189 utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs
190 are included in the development cost breakdown.
191 (iv) **Contract Rents.** The Underwriter reviews submitted rental assistance contracts to
192 determine the Contract Rents currently applicable to the Development. Documentation supporting the
193 likelihood of continued rental assistance is also reviewed. The underwriting analysis will take into
194 consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the
195 Underwriter, the Applicant proposed rents may be used in the underwriting analysis with the
196 recommendations of the Report conditioned upon receipt of final approval of such increase.
197 (B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including
198 but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and
199 dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in
200 a \$5 to \$15 per unit per month range. Exceptions may be made at the discretion of the Underwriter for
201 garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable
202 fees, congregate care/assisted living/elderly facilities, and child care facilities.
203 (i) Exceptions must be justified by operating history of existing comparable properties.
204 (ii) The Applicant must show that the tenant will not be required to pay the additional
205 fee or charge as a condition of renting an apartment unit and must show that the tenant has a
206 reasonable alternative.
207 (iii) The Applicant's operating expense schedule should reflect an offsetting cost
208 associated with income derived from pass-through utility payments, pass-through water, sewer and trash
209 payments, and cable fees.
210 (iv) Collection rates of exceptional fee items will generally be heavily discounted.
211 (v) If the total secondary income is over the maximum per unit per month limit, any cost
212 associated with the construction, acquisition, or development of the hard assets needed to produce an
213 additional fee may also need to be reduced from Eligible Basis for Tax Credit Developments as they may,

214 in that case, be considered to be a commercial cost rather than an incidental to the housing cost of the
 215 Development.

216 (C) **Vacancy and Collection Loss.** The Underwriter uses a vacancy rate of 7.5% (5% vacancy
 217 plus 2.5% for collection loss) unless the Market Analysis reflects a higher or lower established vacancy
 218 rate for the area. Elderly and 100% project-based rental subsidy Developments and other well
 219 documented cases may be underwritten at a combined 5% at the discretion of the Underwriter if the
 220 historical performance reflected in the Market Analysis is consistently higher than a 95% occupancy rate.

221 (D) **Effective Gross Income.** The Underwriter independently calculates EGI. If the EGI figure
 222 provided by the Applicant is within 5% of the EGI figure calculated by the Underwriter, the Applicant's
 223 figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the
 224 Underwriter will maintain and use its independent calculation unless the Applicant's proforma meets the
 225 requirements of paragraph (3) of this subsection.

226 (2) **Expenses.** In determining the Year 1 proforma, the Underwriter evaluates the reasonableness
 227 of the Applicant's expense estimate by line item comparisons based upon the specifics of each
 228 transaction, including the type of Development, the size of the units, and the Applicant's expectations as
 229 reflected in their proforma. Historical stabilized certified or audited financial statements of the
 230 Development or Third Party quotes specific to the Development will reflect the strongest data points to
 231 predict future performance. The Department's database of property in the same location or region as the
 232 proposed Development also provides heavily relied upon data points. Data from the Institute of Real
 233 Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the
 234 proposed Development's property type and specific location or region may be referenced. In some cases
 235 local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property
 236 tax rates are also given significant weight in determining the appropriate line item expense estimate.
 237 Finally, well documented information provided in the Market Analysis, the application, and other sources
 238 may be considered.

239 (A) **General and Administrative Expense.** General and Administrative Expense includes all
 240 accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and
 241 equipment expenses. The underwriting tolerance level for this line item is 20%.

242 (B) **Management Fee.** Management Fee is paid to the property management company to
 243 oversee the effective operation of the property and is most often based upon a percentage of Effective
 244 Gross Income as documented in the management agreement contract. Typically, 5% of the Effective
 245 Gross Income is used, though higher percentages for rural transactions that are consistent with the
 246 TDHCA Database can be concluded. Percentages as low as 3% may be utilized if documented by a fully
 247 executed management contract agreement with an acceptable management company. The Underwriter
 248 will require documentation for any percentage difference from the 5% of the Effective Gross Income
 249 standard.

250 (C) **Payroll and Payroll Expense.** Payroll and Payroll Expense includes all direct staff payroll,
 251 insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a
 252 conventional development. It does not, however, include direct security payroll or additional supportive
 253 services payroll. The underwriting tolerance level for this line item is 10%.

254 (D) **Repairs and Maintenance Expense.** Repairs and Maintenance Expense includes all repairs
 255 and maintenance contracts and supplies. It should not include extraordinary capitalized expenses that
 256 would result from major renovations. Direct payroll for repairs and maintenance activities are included
 257 in payroll expense. The underwriting tolerance level for this line item is 20%.

258 (E) **Utilities Expense (Gas & Electric).** Utilities Expense includes all gas and electric energy
 259 expenses paid by the owner. It includes any pass-through energy expense that is reflected in the EGI.
 260 The underwriting tolerance level for this line item is 30%.

261 (F) **Water, Sewer and Trash Expense.** Water, Sewer and Trash Expense includes all water,
 262 sewer and trash expenses paid by the owner. It would also include any pass-through water, sewer and
 263 trash expense that is reflected in the EGI. The underwriting tolerance level for this line item is 30%.

264 (G) **Insurance Expense.** Insurance Expense includes any insurance for the buildings,
 265 contents, and liability but not health or workman's compensation insurance. The underwriting tolerance
 266 level for this line item is 30%.

267 (H) **Property Tax.** Property Tax includes all real and personal property taxes but not payroll
 268 taxes. The underwriting tolerance level for this line item is 10%.

269 (i) The per unit assessed value will be calculated based on the capitalization rate
 270 published on the county taxing authority's website. If the county taxing authority does not publish a
 271 capitalization rate on the internet, a capitalization rate of 10% will be used or comparable assessed
 272 values may be used in evaluating this line item expense.

273 (ii) Property tax exemptions or proposed payment in lieu of tax agreement (PILOT) must
 274 be documented as being reasonably achievable if they are to be considered by the Underwriter. At the
 275 discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws
 276 may be applied based on the tax-exempt status of the Development Owner and its Affiliates.

277 (I) **Reserves.** Reserves include annual reserve for replacements of future capitalizable
 278 expenses as well as any ongoing additional operating reserve requirements. The Underwriter includes
 279 minimum reserves of \$250 per unit for new construction and \$300 per unit for all other Developments.
 280 The Underwriter may require an amount above \$300 for Developments other than new construction
 281 based on information provided in the PCA. Higher levels of reserves also may be used if they are
 282 documented in the financing commitment letters.

283 (J) **Other Expenses.** The Underwriter will include other reasonable and documented
 284 expenses, not including depreciation, interest expense, lender or syndicator's asset management fees, or
 285 other ongoing partnership fees. Lender or syndicator's asset management fees or other ongoing
 286 partnership fees also are not considered in the Department's calculation of debt coverage. The most
 287 common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

288 (i) **Supportive Services Expense.** Supportive Services Expense includes the documented
 289 cost to the owner of any non-traditional tenant benefit such as payroll for instruction or activities
 290 personnel. The Underwriter will not evaluate any selection points for this item. The Underwriter's
 291 verification will be limited to assuring any anticipated costs are included. For all transactions supportive
 292 services expenses are considered in calculating the Debt Coverage Ratio.

293 (ii) **Security Expense.** Security Expense includes contract or direct payroll expense for
 294 policing the premises of the Development. The Applicant's amount is typically accepted as provided. The
 295 Underwriter will require documentation of the need for security expenses that exceed 50% of the
 296 anticipated payroll expense estimate discussed in subparagraph (C) of this paragraph.

297 (iii) **Compliance Fees.** Compliance fees include only compliance fees charged by TDHCA.
 298 The Department's charge for a specific program may vary over time; however, the Underwriter uses the
 299 current charge per unit per year at the time of underwriting. For all transactions compliance fees are
 300 considered in calculating the Debt Coverage Ratio.

301 (iv) **Cable Television Expense.** Cable Television Expense includes fees charged directly
 302 to the owner of the Development to provide cable services to all units. The expense will be considered
 303 only if a contract for such services with terms is provided and income derived from cable television fees
 304 is included in the projected EGI. Cost of providing cable television in only the community building should
 305 be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.

306 (K) The Department will communicate with and allow for clarification by the Applicant when
 307 the overall expense estimate is over 5% greater or less than the Underwriter's estimate. In such a case,
 308 the Underwriter will inform the Applicant of the line items that exceed the tolerance levels indicated in
 309 this paragraph, but may request additional documentation supporting some, none or all expense line
 310 items. If an acceptable rationale for the difference is not provided, the discrepancy is documented in
 311 the Report and the justification provided by the Applicant and the countervailing evidence supporting
 312 the Underwriter's determination is noted. If the Applicant's total expense estimate is within 5% of the
 313 final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as
 314 reasonable in the Report; however, for purposes of calculating DCR the Underwriter will maintain and
 315 use its independent calculation unless the Applicant's Year 1 proforma meets the requirements of
 316 paragraph (3) of this subsection.

317 (3) **Net Operating Income.** NOI is the difference between the EGI and total operating expenses.
 318 If the Year 1 NOI figure provided by the Applicant is within 5% of the Year 1 NOI figure calculated by the
 319 Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes
 320 of calculating the Year 1 DCR the Underwriter will maintain and use his independent calculation of NOI
 321 unless the Applicant's Year 1 EGI, Year 1 total expenses, and Year 1 NOI are each within 5% of the
 322 Underwriter's estimates.

323 (4) **Debt Coverage Ratio.** Debt Coverage Ratio is calculated by dividing Net Operating Income by
 324 the sum of loan principal and interest for all permanent sources of funds. Loan principal and interest, or
 325 "Debt Service," is calculated based on the terms indicated in the submitted commitments for financing.
 326 Terms generally include the amount of initial principal, the interest rate, amortization period, and
 327 repayment period. Unusual financing structures and their effect on Debt Service will also be taken into
 328 consideration.

329 (A) **Interest Rate.** The interest rate used should be the rate documented in the commitment
 330 letter.

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331 (i) Commitments indicating a variable rate must provide a detailed breakdown of the
332 component rates comprising the all-in rate. The commitment must also state the lender's underwriting
333 interest rate, or the Applicant must submit a separate statement executed by the lender with an
334 estimate of the interest rate as of the date of the statement.

335 (ii) The maximum rate allowed for a competitive application cycle is evaluated by the
336 Director of the Department's division responsible for Credit Underwriting Analysis Reports and posted to
337 the Department's web site prior to the close of the application acceptance period. Historically this
338 maximum acceptable rate has been at or below the average rate for 30-year U.S. Treasury Bonds plus
339 400 basis points.

340 (B) **Amortization Period.** The Department generally requires an amortization of not less than
341 30 years and not more than 50 years or an adjustment to the amortization structure is evaluated and
342 recommended. In non-Tax Credit transactions a lesser amortization period may be used if the
343 Department's funds are fully amortized over the same period.

344 (C) **Repayment Period.** For purposes of projecting the DCR over a 30-year period for
345 Developments with permanent financing structures with balloon payments in less than 30 years, the
346 Underwriter will carry forward Debt Service calculated based on a full amortization and the interest rate
347 stated in the commitment.

348 (D) **Acceptable Debt Coverage Ratio Range.** The acceptable Year 1 DCR range for all priority
349 or foreclosable lien financing plus the Department's proposed financing falls between a minimum of 1.15
350 to a maximum of 1.35. HOPE VI and USDA Rural Development transactions may underwrite to a DCR less
351 than 1.15 based upon documentation of acceptance from the lender.

352 (i) For Developments other than HOPE VI and USDA Rural Development transactions, if
353 the DCR is less than the minimum, the recommendations of the Report are conditioned upon a reduced
354 debt service and the Underwriter will make adjustments to the assumed financing structure in the order
355 presented in subclauses (I) - (III) of this clause.

356 (I) A reduction of the interest rate or an increase in the amortization period for
357 TDHCA funded loans;

358 (II) A reclassification of TDHCA funded loans to reflect grants, if permitted by
359 program rules;

360 (III) A reduction in the permanent loan amount for non-TDHCA funded loans based
361 upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges
362 in subparagraphs (A) and (B) of this paragraph.

363 (ii) If the DCR is greater than the maximum, the recommendations of the Report are
364 conditioned upon an increase in the debt service and the Underwriter will make adjustments to the
365 assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

366 (I) A reclassification of TDHCA funded grants to reflect loans, if permitted by
367 program rules;

368 (II) An increase in the interest rate or a decrease in the amortization period for
369 TDHCA funded loans;

370 (III) An increase in the permanent loan amount for non-TDHCA funded loans based
371 upon the rates and terms in the permanent loan commitment letter as long as they are within the ranges
372 in subparagraphs (A) and (B) of this paragraph.

373 (iii) For Housing Tax Credit Developments, a reduction in the recommended Tax Credit
374 allocation may be made based on the gap/DCR method described in subsection (c)(2) of this section.

375 (iv) Although adjustments in Debt Service may become a condition of the Report, future
376 changes in income, expenses, and financing terms could allow for an acceptable DCR.

377 (5) **Long Term Proforma.** The Underwriter will create a 30-year operating proforma.

378 (A) The base year projection utilized is the Underwriter's Year 1 EGI, Year 1 operating
379 expenses, and Year 1 NOI unless the Applicant's Year 1 EGI, Year 1 total operating expenses, and Year 1
380 NOI are each within 5% of the Underwriter's estimates.

381 (B) A 3% annual growth factor is utilized for income and a 4% annual growth factor is utilized
382 for expenses.

383 (C) Adjustments may be made to the Long Term Proforma if sufficient support
384 documentation is provided by the Applicant. Support may include

385 (i) documentation with terms for Project-based Rental Assistance or Operating Subsidy;

386 (ii) a fully executed management contract with clear terms;

387 (iii) documentation prepared and signed by the Central Appraisal District (CAD) with
388 jurisdiction over the Development indicating the appraisal methodology consistently employed by the

389 CAD and a ten-year history, beginning with the Application year, of tax rates for each taxing district with
390 jurisdiction over the Development; and

391 (iv) required reserve for replacement schedule prepared and signed by the proposed
392 permanent lender or equity provider. In no instance will the reserve for replacement figure included in
393 the Long Term Proforma be less than the minimum requirements as described in §1.37 of this title.

394 (e) **Development Costs.** The Development's need for permanent funds and, when applicable, the
395 Development's Eligible Basis is based upon the projected total development costs. The Department's
396 estimate of the total development cost will be based on the Applicant's project cost schedule to the
397 extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant
398 and tools available to the Underwriter. For new construction Developments, the Underwriter's total cost
399 estimate will be used unless the Applicant's total development cost is within 5% of the Underwriter's
400 estimate. In the case of a rehabilitation Development, the Underwriter may use a lower tolerance level
401 due to the reliance upon the PCA. If the Applicant's total development cost is utilized and the Applicant's
402 line item costs are inconsistent with documentation provided in the Application or program rules, the
403 Underwriter may make adjustments to the Applicant's total cost estimate.

404 (1) **Acquisition Costs.** The proposed acquisition price is verified with the fully executed site
405 control document(s) for the entire proposed site.

406 (A) **Excess Land Acquisition.** Where more land is being acquired than will be utilized for the
407 site and the remaining acreage is not being utilized as permanent green space, the value ascribed to the
408 proposed Development will be prorated from the total cost reflected in the site control document(s). An
409 appraisal or tax assessment value may be tools that are used in making this determination; however, the
410 Underwriter will not utilize a prorated value greater than the total amount in the site control
411 document(s).

412 (B) **Identity of Interest Acquisitions.**

413 (i) The acquisition will be considered an identity of interest transaction when an Affiliate
414 of, a Related Party to, or any owner at any level of the Development Team

415 (I) is the current owner in whole or in part of the proposed property, or

416 (II) was the owner in whole or in part of the proposed property during any period
417 within the 36 months prior to the first day of the Application Acceptance Period.

418 (ii) In all identity of interest transactions the Applicant is required to provide the
419 additional documentation identified in §50.9(h)(7)(A) of this title to support the transfer price to be used
420 in the underwriting analysis.

421 (iii) In no instance will the acquisition cost utilized by the Underwriter exceed

422 (I) the original acquisition cost listed in the submitted settlement statement or, if a
423 settlement statement is not available, the original asset value listed in the most current audited
424 financial statement for the identity of interest owner, or

425 (II) the "as-is" value conclusion in the submitted appraisal.

426 (C) **Acquisition of Buildings for Tax Credit Properties.** In order to make a determination of
427 the appropriate building acquisition value, the Applicant will provide and the Underwriter will utilize an
428 appraisal that meets the Department's Appraisal Rules and Guidelines as described in §1.34 of this title.
429 The value of the improvements are the result of the difference between the as-is appraised value less
430 the land value. The Underwriter may alternatively prorate the actual or identity of interest sales price
431 based upon a lower calculated improvement value over the as-is value provided in the appraisal, so long
432 as the resulting land value utilized by the Underwriter is not less than the land value indicated in the
433 appraisal or tax assessment.

434 (2) **Off-Site Costs.** Off-Site costs are costs of development up to the site itself such as the cost of
435 roads, water, sewer and other utilities to provide the site with access. All off-site costs must be well
436 documented and certified by a Third Party engineer on the required application form.

437 (3) **Site Work Costs.** Project site work costs exceeding \$9,000 per Unit must be well documented
438 and certified by a Third Party engineer on the required application form. In addition, for Applicants
439 seeking Tax Credits, documentation in keeping with §49.9(h)(6)(G) of this title will be utilized in
440 calculating eligible basis.

441 (4) **Direct Construction Costs.** Direct construction costs are the costs of materials and labor
442 required for the building or rehabilitation of a Development.

443 (A) **New Construction.** The Underwriter will use the Marshall and Swift Residential Cost
444 Handbook and historical final cost certifications of all previous housing tax credit allocations to estimate
445 the direct construction cost for a new construction Development. If the Applicant's estimate is more than
446 5% greater or less than the Underwriter's estimate, the Underwriter will attempt to reconcile this
447 concern and ultimately identify this as a cost concern in the Report.

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448 (i) The "Average Quality" multiple, townhouse, or single family costs, as appropriate,
449 from the Marshall and Swift Residential Cost Handbook, based upon the details provided in the
450 application and particularly site and building plans and elevations will be used to estimate direct
451 construction costs. If the Development contains amenities not included in the Average Quality standard,
452 the Department will take into account the costs of the amenities as designed in the Development.

453 (ii) If the difference in the Applicant's direct cost estimate and the direct construction
454 cost estimate detailed in clause (i) of this subparagraph is more than 5%, the Underwriter shall also
455 evaluate the direct construction cost of the Development based on acceptable cost parameters as
456 adjusted for inflation and as established by historical final cost certifications of all previous housing tax
457 credit allocations for:

458 (I) the county in which the Development is to be located, or

459 (II) if cost certifications are unavailable under subclause (I) of this clause, the
460 uniform state service region in which the Development is to be located.

461 (B) **Rehabilitation Costs.** In the case where the Applicant has provided a PCA which is
462 inconsistent with the Applicant's figures as proposed in the development cost schedule, the Underwriter
463 may request a supplement executed by the PCA provider supporting the Applicant's estimate and
464 detailing the difference in costs. If said supplement is not provided or the Underwriter determines that
465 the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the
466 initial PCA estimations in lieu of the Applicant's estimates.

467 (5) **Contingency.** All contingencies identified in the Applicant project cost schedule will be
468 added to Contingency with the total limited to the guidelines detailed in this paragraph. Contingency is
469 limited to a maximum of 5% of direct costs plus site work for new construction Developments and 10% of
470 direct costs plus site work for rehabilitation Developments. For tax credit Developments, the percentage
471 is applied to the sum of the eligible direct construction costs plus eligible site work costs in calculating
472 the eligible contingency cost. The Applicant's figure is used by the Underwriter if the figure is less than
473 5%.

474 (6) **Contractor Fee.** Contractor fees are limited at a total of 14%. The percentage is applied to
475 the sum of the direct construction costs plus site work costs. For tax credit Developments, the
476 percentages are applied to the sum of the eligible direct construction costs plus eligible site work costs
477 in calculating the eligible contractor fees. For Developments also receiving financing from TX-USDA-RHS,
478 the combination of builder's general requirements, builder's overhead, and builder's profit should not
479 exceed the lower of TDHCA or TX-USDA-RHS requirements.

480 (7) **Developer Fee.** Developer fee claimed must be proportionate to the work for which it is
481 earned and consistent with §49.9(d)(6) of this title.

482 (A) For Tax Credit Developments, the development cost associated with developer fees and
483 Development Consultant (also known as Housing Consultant) fees included in Eligible Basis cannot exceed
484 15% of the project's Total Eligible Basis less developer fees for developments proposing 50 units or more
485 and 20% of the project's Total Eligible Basis less developer fees for developments proposing 49 units or
486 less, as defined in the QAP.

487 (B) In the case of a transaction requesting acquisition Tax Credits

488 (i) the allocation of eligible developer fee in calculating rehabilitation/new construction
489 Tax Credits will not exceed 15% of the rehabilitation/new construction basis less developer fees for
490 developments proposing 50 units or more and 20% of the rehabilitation/new construction basis less
491 developer fees for developments proposing 49 units or less, and

492 (ii) no developer fee attributable to an identity of interest acquisition of the
493 Development will be included in Eligible Basis.

494 (C) For non-Tax Credit Developments, the percentage can be up to 15% but is based upon
495 total development costs less the sum of the fee itself, land costs, the costs of permanent financing,
496 excessive construction period financing described in paragraph (8) of this subsection, reserves, and any
497 other identity of interest acquisition cost.

498 (8) **Financing Costs.** Eligible construction period financing is limited to not more than one year's
499 fully drawn construction loan funds at the construction loan interest rate indicated in the commitment.
500 Any excess over this amount is removed to ineligible cost and will not be considered in the determination
501 of developer fee.

502 (9) **Reserves.** The Department will utilize the terms proposed by the syndicator or lender as
503 described in the commitment letter(s) or the amount described in the Applicant's project cost schedule
504 if it is within the range of two to six months of stabilized operating expenses less management fees plus
505 debt service.

506 (10) **Other Soft Costs.** For Tax Credit Developments all other soft costs are divided into eligible
507 and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can
508 be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to
509 fund future operating activities. The Underwriter will evaluate and accept the allocation of these soft
510 costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the
511 Underwriter questions the eligibility of any soft costs, the Applicant is given an opportunity to clarify and
512 address the concern prior to removal from Eligible Basis.

513 (f) **Developer Capacity.** The Underwriter will evaluate the capacity of the Person(s) accountable for
514 the role of the Developer to determine their ability to secure financing and successfully complete the
515 Development. The Department will review financial statements, and personal credit reports for those
516 individuals anticipated to guarantee the completion of the Development.

517 (1) **Credit Reports.** The Underwriter will characterize the Development as "high risk" if the
518 Applicant, General Partner, Developer, anticipated Guarantor or Principals thereof have a credit score
519 which reflects a 40% or higher potential default rate.

520 (2) **Financial Statements of Principals.** The Applicant, Developer, any principals of the
521 Applicant, General Partner, and Developer and any Person who will be required to guarantee the
522 Development will be required to provide a signed and dated financial statement and authorization to
523 release credit information in accordance with the Department's program rules.

524 (A) **Individuals.** The Underwriter will evaluate and discuss financial statements for
525 individuals in a confidential portion of the Report. The Development may be characterized as "high risk"
526 if the Developer, anticipated Guarantor or Principals thereof is determined to have limited net worth or
527 significant lack of liquidity.

528 (B) **Partnerships and Corporations.** The Underwriter will evaluate and discuss financial
529 statements for partnerships and corporations in the Report. The Development may be characterized as
530 "high risk" if the Developer, anticipated Guarantor or Principals thereof is determined to have limited net
531 worth or significant lack of liquidity.

532 (C) If the Development is characterized as a high risk for either lack of previous experience
533 as determined by the TDHCA division responsible for compliance or a higher potential default rate is
534 identified as described in paragraph (1) or (2) of this subsection, the Report must condition any potential
535 award upon the identification and inclusion of additional Development partners who can meet the
536 Department's guidelines.

537 (g) **Other Underwriting Considerations.** The Underwriter will evaluate numerous additional
538 elements as described in subsection (b) of this section and those that require further elaboration are
539 identified in this subsection.

540 (1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other
541 information provided to determine if any of the buildings, drives, or parking areas reside within the 100-
542 year floodplain. If such a determination is made by the Underwriter, the Report will include a condition
543 that:

544 (A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of
545 Map Revision (LOMR-F); or

546 (B) The Applicant must identify the cost of flood insurance for the buildings and for the
547 tenant's contents for buildings within the 100-year floodplain; or

548 (C) The Development must be designed to comply with the QAP, as proposed.

549 (2) The Underwriter will identify in the report any Developments funded or known and
550 anticipated to be eligible for funding within one linear mile of the subject.

551 (3) **Supportive Housing.** The unique development and operating characteristics of Supportive
552 Housing Developments may require special consideration in the following areas:

553 (A) **Operating Income.** The extremely-low-income tenant population typically targeted by a
554 Supportive Housing Development may include deep-skewing of rents to well below the 50% AMI level or
555 other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's
556 proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for
557 the units and equal to any project based rental subsidy rent to be utilized for the Development.

558 (B) **Operating Expenses.** A Supportive Housing Development may have significantly higher
559 expenses for payroll, management fee, security, resident support services, or other items than typical
560 Affordable Housing Developments. The Underwriter will rely heavily upon the historical operating
561 expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to
562 the Underwriter.

563 (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted
564 from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to

565 operate without conventional debt. Applicants must provide evidence of sufficient financial resources to
 566 offset any projected 15-year cumulative negative cash flows. Such evidence will be evaluated by the
 567 Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and
 568 may take the form of one or a combination of the following: executed subsidy commitment(s), set-aside
 569 of Applicant's financial resources, to be substantiated by an audited financial statement evidencing
 570 sufficient resources, and/or proof of annual fundraising success sufficient to fill anticipated operating
 571 losses. If either a set aside of financial resources or annual fundraising are used to evidence the long
 572 term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board
 573 must be provided confirming their irrevocable commitment to the provision of these funds and activities.

574 (D) **Development Costs.** For Supportive Housing that is styled as efficiencies, the
 575 Underwriter may use "Average Quality" dormitory costs from the Marshall & Swift Valuation Service, with
 576 adjustments for amenities and/or quality as evidenced in the application, as a base cost in evaluating
 577 the reasonableness of the Applicant's direct construction cost estimate for new construction
 578 Developments.

579 (h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in
 580 order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in
 581 this section, but may be characterized as "the best available option" or "acceptable available option"
 582 depending on the circumstances and subject to the discretion of the Underwriter as long as the option
 583 analyzed and recommended is more likely to achieve a better financial outcome for the property and the
 584 Department than the status quo.

585 (i) **Feasibility Conclusion.** An infeasible Development will not be recommended for funding or
 586 allocation unless the Underwriter can determine a plausible alternative feasible financing structure and
 587 conditions the recommendations of the report upon receipt of documentation supporting the alternative
 588 feasible financing structure. A development will be characterized as infeasible if paragraph (1) or (2) of
 589 this subsection applies. The Development will be characterized as infeasible if one or more of
 590 paragraphs (3) - (5) of this subsection applies unless paragraph (6) of this subsection also applies.

591 (1) **Inclusive Capture Rate.** Defined in §1.33 of this title. The Underwriter will independently
 592 verify the inclusive capture rate. The Development

593 (A) is characterized as Rural, Elderly or Special Needs and the inclusive capture rate is above
 594 75% for the total proposed units; or

595 (B) is not characterized as Rural, Elderly or Special Needs and the inclusive capture rate is
 596 above 25% for the total proposed units.

597 (C) Developments meeting the requirements of subparagraph (A) or (B) of this paragraph may
 598 avoid being characterized as infeasible if clause (i) or (ii) of this paragraph apply.

599 (i) **Replacement Housing.** The Development is comprised of Affordable Housing which
 600 replaces previously existing substandard Affordable Housing within the Primary Market Area as defined in
 601 §1.33 of this title on a Unit for Unit basis, and gives the displaced tenants of the previously existing
 602 substandard Affordable Housing a leasing preference.

603 (ii) **Existing Housing.** The Development is comprised of existing Affordable Housing
 604 which is at least 80% occupied and gives displaced existing tenants a leasing preference as stated in the
 605 submitted relocation plan.

606 (2) **Deferred Developer Fee.** Development requesting an allocation of tax credits cannot repay
 607 the estimated deferred developer fee, based on the Underwriter's recommended financing structure,
 608 from cashflow within the first 15 years of the long term proforma as described in subsection (d)(5) of this
 609 section.

610 (3) **Restricted Market Rent.** The Restricted Market Rent for units with rents restricted at 60% of
 611 AMGI is less than both the net Program Rent and Market Rent for units with rents restricted at or below
 612 50% of AMGI unless the development proposes all restricted units with rents restricted at or below the
 613 50% of AMGI level. The requirement in this section may be waived by the Executive Director of the
 614 Department on appeal if documentation is submitted by the Applicant to support unique circumstances
 615 of the market that would provide mitigation.

616 (4) **Initial Feasibility.** The Year 1 annual total operating expense divided by the Year 1 Effective
 617 Gross Income is greater than 65%.

618 (5) **Long Term Feasibility.** Any year in the first 15 years of the Long Term Proforma, as defined
 619 in subsection (d)(5) of this section, reflects

620 (A) negative Cash Flow; or

621 (B) a Debt Coverage Ratio below 1.15.

622 (6) **Exceptions.** Developments meeting the requirements of one or more of paragraphs (3) - (5)
623 of this subsection may be re-characterized as feasible if one or more of subparagraphs (A) - (C) of this
624 paragraph and subparagraph (D) of this paragraph apply.

625 (A) The Development will receive Project-based Section 8 Rental Assistance and a firm
626 commitment with terms including contract rent and number of units is submitted at application.

627 (B) The Development will receive rental assistance in association with USDA-RD-RHS
628 financing.

629 (C) The Development will be characterized as public housing as defined by HUD.

630 (D) The units not receiving Project-based Section 8 Rental Assistance or rental assistance in
631 association with USDA-RD-RHS financing, or not characterized as public housing do not propose rents that
632 are less than the Project-based Section 8, USDA-RD-RHS financing, or public housing units.
633

634 **§1.33 Market Analysis Rules and Guidelines**

635 (a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for
636 decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The
637 analysis must determine the feasibility of the subject Property rental rates or sales price and state
638 conclusions as to the impact of the Property with respect to the determined housing needs.

639 (b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to
640 understand the market data presented, the analysis of the data, and the conclusions derived from such
641 data. All data presented should reflect the most current information available and the report must
642 provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must
643 clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps
644 leading to a calculated figure must be presented in the body of the report.

645 (c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared
646 and certified by an approved Qualified Market Analyst (§2306.67055). The Department will maintain an
647 approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

648 (1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) -
649 (F) of this paragraph at least thirty days prior to the first day of the Application Acceptance Period for
650 which the Market Analyst must be approved. To maintain status as an approved Qualified Market
651 Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted
652 annually on the first Monday in February for review by the Department.

653 (A) Documentation of good standing in the State of Texas.

654 (B) A current organization chart or list reflecting all members of the firm who may author or
655 sign the Market Analysis.

656 (C) Resumes for all members of the firm or subcontractors who may author or sign the
657 Market Analysis.

658 (D) General information regarding the firm's experience including references, the number of
659 previous similar assignments and time frames in which previous assignments were completed.

660 (E) Certification from an authorized representative of the firm that the services to be
661 provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this
662 section, in effect for the application round in which each Market Analysis is submitted.

663 (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and
664 Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is
665 submitted.

666 (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies
667 with the rules and guidelines set forth in this section may be identified and require timely correction.
668 Subsequent to the completion of the application round and as time permits, staff or a review appraiser
669 will re-review a sample set of submitted market analyses to ensure that the Department's Market
670 Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the
671 Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of
672 the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst
673 list.

674 (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a
675 Market Analysis commissioned prior to the removal date and at least 90 days prior to the first day of the
676 applicable Application Acceptance Period.

677 (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must
678 amend the previous report to remove all discrepancies or submit a new sample Market Analysis that
679 conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in
680 effect for the year in which the updated or new sample Market Analysis is submitted.

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- 681 (3) The list of approved Qualified Market Analysts is posted on the Department's web site and
682 updated within 72 hours of a change in the status of a Market Analyst.
- 683 (d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the
684 Department must be organized in a format that follows a logical progression and must include, at
685 minimum, items addressed in paragraphs (1) - (12) of this subsection.
- 686 (1) **Title Page.** Include Property address or location, effective date of analysis, date report
687 completed, name and address of person authorizing report, and name and address of Market Analyst.
- 688 (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed.
689 Include Property address or location, description of Property, statement as to purpose and scope of
690 analysis, reference to accompanying Market Analysis report with effective date of analysis and summary
691 of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures
692 of all Market Analysts authorized to work on the assignment. Include a statement that the report
693 preparer has read and understood the requirements of this section.
- 694 (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- 695 (4) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general
696 and specific, made by the Market Analyst concerning the Property.
- 697 (5) **Identification of the Property.** Provide a statement to acquaint the reader with the
698 Development. Such information includes street address, tax assessor's parcel number(s), and
699 Development characteristics.
- 700 (6) **Statement of Ownership.** Disclose the current owners of record and provide a three year
701 history of ownership for the subject Property.
- 702 (7) **Secondary Market Area.** All of the Market Analyst's conclusions specific to the subject
703 Development must be based on only one Secondary Market Area definition. The entire PMA, as described
704 in paragraph (8) of this subsection, must be contained within the Secondary Market boundaries. The
705 Market Analyst must adhere to the methodology described in this paragraph when determining the
706 secondary market area (§2306.67055).
- 707 (A) The Secondary Market Area will be defined by the Market Analyst with
708 (i) size based on a base year population of no more than 250,000 people for
709 Developments targeting families, and
710 (ii) boundaries based on
711 (I) major roads,
712 (II) political boundaries, and
713 (III) natural boundaries.
714 (IV) A radius is prohibited as a boundary definition.
- 715 (B) The Market Analyst's definition of the Secondary Market Area must be supported with a
716 detailed description of the methodology used to determine the boundaries. If applicable, the Market
717 Analyst must place special emphasis on data used to determine an irregular shape for the Secondary
718 Market.
- 719 (C) A scaled distance map indicating the Secondary Market Area boundaries that clearly
720 identifies the location of the subject Property must be included.
- 721 (8) **Primary Market Area.** All of the Market Analyst's conclusions specific to the subject
722 Development must be based on only one Primary Market Area definition. The Market Analyst must
723 adhere to the methodology described in this paragraph when determining the market area
724 (§2306.67055).
- 725 (A) The Primary Market Area will be defined by the Market Analyst with
726 (i) size based on a base year population of no more than
727 (I) 100,000 people for Developments targeting the general population, and
728 (II) 250,000 people for Qualified Elderly Developments or Developments targeting
729 special needs populations,
730 (ii) boundaries based on
731 (I) major roads,
732 (II) political boundaries, and
733 (III) natural boundaries.
734 (IV) A radius is prohibited as a boundary definition.
- 735 (B) The Market Analyst's definition of the Primary Market Area must be supported with a
736 detailed description of the methodology used to determine the boundaries. If applicable, the Market
737 Analyst must place special emphasis on data used to determine an irregular shape for the PMA.
- 738 (C) A scaled distance map indicating the Primary Market Area boundaries that clearly
739 identifies the location of the subject Property and the location of all Local Amenities must be included.

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(9) Market Information.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the Secondary Market, if applicable

- (i) total housing,
- (ii) rental developments,
- (iii) Affordable Housing,
- (iv) Comparable Units,
- (v) Unstabilized Comparable Units, and
- (vi) proposed Comparable Units.

(B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development (§1.32(d)(1)(C)). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by

- (i) number of Bedrooms,
- (ii) quality of construction (class),
- (iii) Targeted Population, and
- (iv) Comparable Units.

(C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) **Turnover.** The turnover rate should be specific to the Targeted Population. The data supporting the turnover rate must originate from documented turnover rates from at least one of the following

- (i) Comparable Units,
- (ii) the defined PMA,
- (iii) the defined Secondary Market, and
- (iv) a Third Party data collection agency or demographer.

(E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.

(i) Demographics.

(I) **Population.** Provide population and household figures, supported by actual demographics, for a five-year period with the year of application as the base year.

(II) **Target.** If applicable, adjust the household projections for the Qualified Elderly or special needs population targeted by the proposed Development. State the target adjustment rate.

(III) **Household Size-Appropriate.** Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up). State the Household Size-Appropriate adjustment rate.

(IV) **Income Eligible.** Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit type by number of Bedrooms proposed and rent restriction category with

- (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35% for the general population and 40% for Qualified Elderly households, and
- (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up).
- (-c-) State the Income Eligible adjustment rate.

(V) **Tenure-Appropriate.** Adjust the income-eligible household projections for tenure (renter or owner). State the Tenure-Appropriate adjustment rate.

(ii) **Demand from Turnover.** Apply the turnover rate as described in subparagraph (D) of this paragraph to the target, income-eligible, size-appropriate and tenure-appropriate households in the PMA projected at the proposed placed in service date.

(iii) **Demand from Population Growth.** Calculate the target, income-eligible, size-appropriate and tenure-appropriate household growth in the PMA for the twelve month period following the proposed placed in service date.

(iv) Demand from Secondary Market Area.

(I) Apply the turnover rate as described in subparagraph (D) of this paragraph to the target, income-eligible, size-appropriate and tenure-appropriate households in the Secondary Market Area projected at the proposed placed in service date.

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799 (II) Only 25% of the demand calculated in subclause (I) of this clause may be included
800 in the calculation of demand as described in paragraph(10)(D) of this subsection and for use in
801 calculation of inclusive capture rate as described in paragraph (10)(E) of this subsection. In addition, 25%
802 of the Comparable Units from Unstabilized Developments within the Secondary Market Area must be
803 included in the calculation of inclusive capture rate.

804 (v) **Demand from Other Sources.** The source of additional demand and the methodology
805 used to calculate the additional demand must be clearly stated. Calculation of additional demand must
806 factor in the adjustments described in clause (i) of this subparagraph.

807 (10) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately
808 addressing each housing type and specific population to be served by the Development in terms of items
809 in subparagraphs (A) - (G) of this paragraph. All conclusions must be consistent with the data and
810 analysis presented throughout the Market Analysis.

811 (A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by
812 Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate
813 household demand within the PMA.

814 (B) **Rents.** Provide a separate market rent and Restricted Market Rent conclusion for each
815 proposed Unit type by number of Bedrooms and rent restriction category. Conclusions of Market Rent or
816 Restricted Market Rent below the maximum net Program Rent limit must be well documented as the
817 conclusions may impact the feasibility of the Development under §1.32(i) of this title.

818 (i) **Comparable Units.** Identify developments in the PMA with Comparable Units. In
819 Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to
820 collect data from markets with similar characteristics and make quantifiable location adjustments.
821 Provide a data sheet for each development consisting of

822 (I) Development name,
823 (II) address,
824 (III) year of construction and year of rehabilitation, if applicable,
825 (IV) property condition,
826 (V) population target,
827 (VI) unit mix specifying number of Bedrooms, number of baths, net rentable square

828 footage and

829 (-a-) monthly rent, or
830 (-b-) sales price with terms, marketing period and date of sale,

831 (VII) description of concessions,
832 (VIII) list of unit amenities,
833 (IX) utility structure,
834 (X) list of common amenities, and
835 (XI) for rental developments only

836 (-a-) occupancy, and
837 (-b-) turnover.

838 (ii) Provide a scaled distance map indicating the Primary Market Area boundaries that
839 clearly identifies the location of the subject Property and the location of the identified developments
840 with Comparable Units.

841 (iii) **Rent Adjustments.** In support of the Market Rent and Restricted Market Rent
842 conclusions, provide a separate attribute adjustment matrix for each proposed unit type by number of
843 Bedrooms and rental restriction category.

844 (I) The Department recommends use of HUD Form 92273.

845 (II) A minimum of three developments must be represented on each attribute
846 adjustment matrix.

847 (III) Adjustments for concessions must be included, if applicable.

848 (IV) Total adjustments in excess of 15% must be supported with additional narrative.

849 (V) Total adjustments in excess of 25% indicate the Units are not comparable for the
850 purposes of determining Market Rent and Restricted Market Rent conclusions.

851 (C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and
852 collection loss projections for the subject derived independent of the Applicant's estimates.

853 (D) **Demand.** State the target, income-eligible, size-appropriate and tenure-appropriate
854 household demand by Unit type by number of Bedrooms proposed and rent restriction category (e.g.
855 one-Bedroom units restricted at 50% of AMFI; two-Bedroom units restricted at 60% of AMFI) by summing
856 the demand components applicable to the subject Development discussed in paragraph (9)(E)(ii) - (v) of
857 this subsection. State the total target, income-eligible, size-appropriate and tenure-appropriate

858 household demand by summing the demand components applicable to the subject Development
859 discussed in paragraph (9)(E)(ii) - (v) of this subsection.

860 (E) **Inclusive Capture Rate.** The Market Analyst must calculate inclusive capture rates for
861 the subject Development's proposed Unit types by number of Bedrooms and rent restriction categories,
862 market rate Units, if applicable, and total Units. The Underwriter will adjust the inclusive capture rates
863 to take into account any errors or omissions. To calculate an inclusive capture rate

864 (i) total

865 (I) the proposed subject Units,

866 (II) Comparable Units with priority, as defined in §49.9(d)(2) of this title, over the
867 subject that have made application to TDHCA and have not been presented to the TDHCA Board for
868 decision and

869 (III) Comparable Units in previously approved but Unstabilized Developments, and

870 (ii) divide by the total target, income-eligible, size-appropriate and tenure-appropriate
871 household demand stated in subparagraph (D) of this paragraph.

872 (iii) Refer to §1.32(i) for feasibility criteria.

873 (F) **Absorption.** Project an absorption period for the subject Development to achieve
874 Sustaining Occupancy. State the absorption rate.

875 (G) **Market Impact.** Provide an assessment of the impact the subject Development, as
876 completed, will have on existing program Developments in the Primary Market (§2306.67055).

877 (11) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood,
878 street scenes, and comparables. An aerial photograph is desirable but not mandatory.

879 (12) **Appendices.** Any Third Party reports including demographics relied upon by the Market
880 Analyst must be provided in appendix form. A list of works cited including personal communications also
881 must be provided, and the Modern Language Association (MLA) format is suggested.

882 (e) The Department reserves the right to require the Market Analyst to address such other issues as
883 may be relevant to the Department's evaluation of the need for the subject Development and the
884 provisions of the particular program guidelines.

885 (f) All Applicants shall acknowledge, by virtue of filing an application, that the Department shall not
886 be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting
887 conclusions for those submitted by the Market Analyst.

888

889 §1.34 Appraisal Rules and Guidelines

890 (a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform
891 Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the
892 Appraisal Foundation.

893 (b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate
894 data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on
895 the information included. Any Third Party reports relied upon by the appraiser must be verified by the
896 appraiser as to the validity of the data and the conclusions.

897 (c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case
898 basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report
899 itself and the experience and educational background of the appraiser. At minimum, a qualified
900 appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification
901 Board.

902 (d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format
903 that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the
904 appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

905 (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that
906 the Department is granted full authority to rely on the findings of the report, and name and address of
907 person authorizing report.

908 (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all
909 person(s) that provided significant assistance in the preparation of the report, date of report, effective
910 date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's
911 parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to
912 work on the assignment including the appraiser who inspected the property. Include a statement
913 indicating the report preparer has read and understood the requirements of this section.

914 (3) **Table of Contents.** Number the exhibits included with the report for easy reference.

915 (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and
916 experience.

917 (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject
918 property which occurred within the past three years. Any pending agreements of sale, options to buy, or
919 listing of the subject property must be disclosed in the appraisal report.

920 (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple
921 interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be
922 defined in terms of current appraisal terminology with the source cited.

923 (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) -
924 (E) of this paragraph.

925 (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.),
926 shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the site.
927 Include a plat map and/or survey.

928 (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a
929 floodplain map with the subject clearly identified.

930 (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed
931 restrictions, where applicable, and type of Development permitted. Any probability of change in zoning
932 should be discussed. A statement as to whether or not the improvements conform to the current zoning
933 should be included. A statement addressing whether or not the improvements could be rebuilt if
934 damaged or destroyed, should be included. If current zoning is not consistent with the highest and best
935 use, and zoning changes are reasonable to expect, time and expense associated with the proposed
936 zoning change should be considered and documented. A zoning map should be included.

937 (D) **Description of Improvements.** Provide a thorough description and analysis of the
938 improvements including size (net rentable area, gross building area, etc.), number of stories, number of
939 buildings, type/quality of construction, condition, actual age, effective age, exterior and interior
940 amenities, items of deferred maintenance, etc. All applicable forms of depreciation should be addressed
941 along with the remaining economic life.

942 (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and
943 the impact of such deficiencies may not be quantified; however; the report should disclose any potential
944 environmental hazards (e.g., discolored vegetation, oil residue, asbestos-containing materials, lead-
945 based paint etc.) noted during the inspection.

946 (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest
947 and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection
948 as well as a supply and demand analysis.

949 (A) The appraisal must inform the reader of any positive or negative market trends which
950 could influence the value of the appraised property. Detailed data must be included to support the
951 appraiser's estimate of stabilized income, absorption, and occupancy.

952 (B) The highest and best use section must contain a separate analysis "as if vacant" and "as
953 improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically
954 possible, feasible, and maximally productive) must be considered.

955 (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales
956 Comparison Approach and Income Approach, are considered in valuing the property. If an approach is not
957 applicable to a particular property an adequate explanation must be provided. A land value estimate
958 must be provided if the cost approach is not applicable.

959 (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to
960 construct the subject improvements. The source(s) of the cost data should be reported.

961 (i) Cost comparables are desirable; however, alternative cost information may be
962 obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc.
963 should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

964 (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion
965 must be consistent with the description of the improvements.

966 (iii) The land value estimate should include a sufficient number of sales which are
967 current, comparable, and similar to the subject in terms of highest and best use. Comparable sales
968 information should include address, legal description, tax assessor's parcel number(s), sales price, date
969 of sale, grantor, grantee, three year sales history, and adequate description of property transferred. The
970 final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and
971 appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this
972 clause should be made when applicable.

973 (I) Property rights conveyed.

974 (II) Financing terms.

975 (III) Conditions of sale.

- 976 (IV) Location.
- 977 (V) Highest and best use.
- 978 (VI) Physical characteristics (e.g., topography, size, shape, etc.).
- 979 (VII) Other characteristics (e.g., existing/proposed entitlements, special
- 980 assessments, etc.).

981 (B) **Sales Comparison Approach.** This section should contain an adequate number of sales to
982 provide the reader with a description of the current market conditions concerning this property type.
983 Sales data should be recent and specific for the property type being appraised. The sales must be
984 confirmed with buyer, seller, or an individual knowledgeable of the transaction.

985 (i) Sales information should include address, legal description, tax assessor's parcel
986 number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale,
987 recordation of the instrument, parties to the transaction, three year sale history, complete description
988 of the property and property rights conveyed, and discussion of marketing time. A scaled distance map
989 clearly identifying the subject and the comparable sales must be included.

990 (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual
991 market activity and market participants.

992 (I) **Sale Price/Unit of Comparison.** The analysis of the sale comparables must
993 identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale,
994 conditions of sale, market conditions, and physical features. Sufficient narrative must be included to
995 permit the reader to understand the direction and magnitude of the individual adjustments, as well as a
996 unit of comparison value indicator for each comparable.

997 (II) **Net Operating Income/Unit of Comparison.** The net operating income statistics
998 for the comparables must be calculated in the same manner. It should be disclosed if reserves for
999 replacement have been included in this method of analysis. At least one other method should accompany
1000 this method of analysis.

1001 (C) **Income Approach.** This section must contain an analysis of both the actual historical and
1002 projected income and expense aspects of the subject property.

1003 (i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should
1004 include an adequate number of actual market transactions to inform the reader of current market
1005 conditions concerning rental units. The comparables must indicate current research for this specific
1006 property type. The comparables must be confirmed with the landlord, tenant or agent and individual
1007 data sheets must be included. The individual data sheets should include property address, lease terms,
1008 description of the property (e.g., unit type, unit size, unit mix, interior amenities, exterior amenities,
1009 etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market
1010 Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and
1011 rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the
1012 property, etc. must be considered.

1013 (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along
1014 with the owner's current budget projections must be reported, summarized, and analyzed. If such data is
1015 unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions
1016 should be made. The contract rents should be compared to the market-derived rents. A determination
1017 should be made as to whether the contract rents are below, equal to, or in excess of market rates. If
1018 there is a difference, its impact on value must be qualified.

1019 (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for
1020 the subject should be reported and compared to occupancy data from the rental comparables and
1021 overall occupancy data for the subject's Primary Market.

1022 (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected
1023 budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this
1024 effect is required and appropriate assumptions and limiting conditions should be made. Historical
1025 expenses should be compared to comparables expenses of similar property types or published survey
1026 data (e.g., IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data
1027 regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent
1028 taxes exist.

1029 (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective
1030 of the subject market and explain the omission of any method not considered in the report.

1031 (I) **Direct Capitalization.** The primary method of deriving an overall rate (OAR) is
1032 through market extraction. If a band of investment or mortgage equity technique is utilized, the
1033 assumptions must be fully disclosed and discussed.

1034 (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis
1035 should include a detailed and supportive discussion of the projected holding/investment period, income
1036 and income growth projections, occupancy projections, expense and expense growth projections,
1037 reversionary value and support for the discount rate.

1038 (10) **Value Estimates.** Reconciliation final value estimate is required.

1039 (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the
1040 underlying land, based upon current sales comparables. The appraiser should consider the fee simple or
1041 leased fee interest as appropriate.

1042 (B) Appraisal assignments for new construction are required to provide an "as completed"
1043 value of the proposed structures. These reports shall provide an "as restricted with favorable financing"
1044 value as well as an "unrestricted market" value.

1045 (C) Reports on Properties to be rehabilitated shall address the "as restricted with favorable
1046 financing" value as well as both an "as is" value and an "as completed" value. The appraiser should
1047 consider the fee simple or leased fee interest as appropriate.

1048 (D) If required the appraiser must include a separate assessment of personal property,
1049 furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or
1050 intangible items are not part of the transaction or value estimate, a statement to such effect should be
1051 included.

1052 (11) **Marketing Time.** Given property characteristics and current market conditions, the
1053 appraiser(s) should employ a reasonable marketing period. The report should detail existing market
1054 conditions and assumptions considered relevant.

1055 (12) **Photographs.** Provide good quality color photographs of the subject property (front, rear,
1056 and side elevations, on-site amenities, interior of typical units if available). Photographs should be
1057 properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included.
1058 An aerial photograph is desirable but not mandatory.

1059 (e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of Department program rules
1060 and guidelines and the appraisal must include analysis of any impact to the subject's value.
1061

1062 §1.35 Environmental Site Assessment Rules and Guidelines

1063 (a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department
1064 should be conducted and reported in conformity with the standards of the American Society for Testing
1065 and Materials. The initial report should conform with the Standard Practice for Environmental Site
1066 Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05). Any subsequent reports
1067 should also conform to ASTM standards and such other recognized industry standards as a reasonable
1068 person would deem relevant in view of the Property's anticipated use for human habitation. The
1069 environmental assessment shall be conducted by a Third Party environmental professional at the expense
1070 of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards). Copies
1071 of reports provided to TDHCA which were commissioned by other financial institutions should address
1072 TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report
1073 should be submitted extending reliance on the report to TDHCA. The ESA report should also include a
1074 statement that the person or company preparing the ESA report will not materially benefit from the
1075 Development in any other way than receiving a fee for performing the Environmental Site Assessment,
1076 and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must
1077 contain a statement indicating the report preparer has read and understood the requirements of this
1078 section.

1079 (b) In addition to ASTM requirements, the report must

1080 (1) State if a **noise study** is recommended for a property in accordance with current HUD
1081 guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and
1082 military airfields, or other potential sources of excessive noise;

1083 (2) Provide a copy of a **current survey**, if available, or other drawing of the site reflecting the
1084 boundaries and adjacent streets, all improvements on the site, and any items of concern described in
1085 the body of the environmental site assessment or identified during the physical inspection;

1086 (3) Provide a copy of the current **FEMA Flood Insurance Rate Map** showing the panel number
1087 and encompassing the site with the site boundaries precisely identified and superimposed on the map.

1088 (4) If the subject site includes any improvements or debris from pre-existing improvements,
1089 state if testing for **asbestos containing materials (ACMs)** would be required pursuant to local, state, and
1090 federal laws, or recommended due to any other consideration;

1091 (5) If the subject site includes any improvements or debris from pre-existing improvements,
1092 state if testing for **Lead Based Paint** would be required pursuant to local, state, and federal laws, or
1093 recommended due to any other consideration;

1094 (6) State if testing for **lead in the drinking water** would be required pursuant to local, state,
1095 and federal laws, or recommended due to any other consideration such as the age of pipes and solder in
1096 existing improvements; and

1097 (7) Assess the potential for the presence of **Radon** on the property, and recommend specific
1098 testing if necessary.

1099 (c) If the report recommends further studies or establishes that environmental hazards currently
1100 exist on the Property, or are originating off-site but would nonetheless affect the Property, the
1101 Development Owner must act on such a recommendation or provide a plan for either the abatement or
1102 elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard
1103 must be presented upon Application submittal.

1104 (d) For Developments in programs that allow a waiver of the Phase I ESA such as a TX-USDA-RHS
1105 funded Development, the Development Owners are hereby notified that it is their responsibility to
1106 ensure that the Development is maintained in compliance with all state and federal environmental
1107 hazard requirements.

1108 (e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's
1109 environmental assessment report, provided that it conforms to the requirements of this subsection.
1110

1111 **§1.36 Property Condition Assessment Guidelines**

1112 (a) **General Provisions.** The objective of the Property Condition Assessment (the PCA) is to provide
1113 cost estimates for repairs, replacements, or new construction which are: immediately necessary;
1114 proposed by the developer; and expected to be required throughout the term of the regulatory period
1115 and not less than 30 years. The PCA prepared for the Department should be conducted and reported in
1116 conformity with the American Society for Testing and Materials "Standard Guide for Property Condition
1117 Assessments: Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018)"
1118 except as provided for in subsections (b) and (c) of this section. The PCA must include discussion and
1119 analysis of the following:

1120 (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess
1121 the condition of the system or component, and estimate its remaining useful life, citing the basis or the
1122 source from which such estimate is derived.

1123 (2) **Code Compliance.** The PCA should review and document any known violations of any
1124 applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the
1125 responsibility of the Housing Sponsor or Applicant to ensure that the PCA adequately considers any and
1126 all applicable federal, state, and local laws and regulations which may govern any work performed to the
1127 subject property.

1128 (3) **Program Rules.** The PCA should assess the extent to which any systems or components must
1129 be modified, repaired, or replaced in order to comply with any specific requirements of the housing
1130 program under which the Development is proposed to be financed, particular consideration being given
1131 to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for
1132 which the Applicant may claim points.

1133 (4) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Housing Sponsor
1134 or Applicant to ensure that the PCA provider is apprised of all development activities associated with the
1135 proposed transaction and consistency of the total immediately necessary and proposed repair and
1136 replacement cost estimates with the development cost schedule submitted as an exhibit of the
1137 Application.

1138 (A) **Immediately Necessary Repairs and Replacement.** Systems or components which are
1139 expected to have a remaining useful life of less than one year, which are found to be in violation of any
1140 applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or
1141 which are otherwise in a state of deferred maintenance or pose health and safety hazards should be
1142 considered immediately necessary repair and replacement. The PCA must provide a separate estimate of
1143 the costs associated with the repair, replacement, or maintenance of each system or component which is
1144 identified as being an immediate need, citing the basis or the source from which such cost estimate is
1145 derived.

1146 (B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for
1147 additional repair, replacement, or new construction above and beyond the immediate repair and
1148 replacement described in subparagraph (A) of this paragraph, such items must be identified and the
1149 nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA

1150 must provide a separate estimate of the costs associated with the repair, replacement, or new
1151 construction which is identified as being above and beyond the immediate need, citing the basis or the
1152 source from which such cost estimate is derived.

1153 (C) **Expected Repair and Replacement Over Time.** The term during which the PCA should
1154 estimate the cost of expected repair and replacement over time must equal the longest term of any land
1155 use or regulatory restrictions which are, or will be, associated with the provision of housing on the
1156 property. The PCA must estimate the periodic costs which are expected to arise for repairing or
1157 replacing each system or component of the property, based on the estimated remaining useful life of
1158 such system or component as described in paragraph (1) of this subsection adjusted for completion of
1159 repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B)
1160 of this paragraph. The PCA must include a separate table of the estimated long term costs which
1161 identifies in each line the individual component of the property being examined, and in each column the
1162 year during the term in which the costs are estimated to be incurred and no less than 15 years. The
1163 estimated costs for future years should be given in both present dollar values and anticipated future
1164 dollar values assuming a reasonable inflation factor of not less than 2.5% per annum.

1165 (b) If a copy of such standards or a sample report have been provided for the Department's review, if
1166 such standards are widely used, and if all other criteria and requirements described in this section are
1167 satisfied, the Department will also accept copies of reports commissioned or required by the primary
1168 lender for a proposed transaction, which have been prepared in accordance with:

- 1169 (1) Fannie Mae's criteria for Physical Needs Assessments,
1170 (2) Federal Housing Administration's criteria for Project Capital Needs Assessments,
1171 (3) Freddie Mac's guidelines for Engineering and Property Condition Reports,
1172 (4) TX-USDA-RHS guidelines for Capital Needs Assessment, or
1173 (5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting
1174 Property Condition Assessments, Multifamily Buildings.

1175 (c) The Department may consider for acceptance reports prepared according to other standards
1176 which are not specifically named above in subsection (b) of this section, if a copy of such standards or a
1177 sample report have been provided for the Department's review, if such standards are widely used, and if
1178 all other criteria and requirements described in this section are satisfied.

1179 (d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to
1180 TDHCA as the client. Copies of reports provided to TDHCA which were commissioned by other financial
1181 institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and
1182 the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA
1183 report should also include a statement that the person or company preparing the PCA report will not
1184 materially benefit from the Development in any other way than receiving a fee for performing the PCA.
1185 The PCA report must contain a statement indicating the report preparer has read and understood the
1186 requirements of this section. The PCA should be signed and dated by the Third Party report provider not
1187 more than six months prior to the date of the application.
1188

1189 **§1.37 Reserve for Replacement Rules and Guidelines**

1190 (a) **General Provisions.** The Department will require Developments to provide regular maintenance
1191 to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with
1192 §2306.186. The reserve must be established for each unit in a Development of 25 or more rental units,
1193 regardless of the amount of rent charged for the unit. The Department shall, through cooperation of its
1194 divisions responsible for asset management and compliance, ensure compliance with this section.

1195 (b) The First Lien Lender shall maintain the reserve account through an escrow agent acceptable to
1196 the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the
1197 rules set forth in this section and §2306.186.

1198 (1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of
1199 a bond indenture or tax credit syndication, the Department shall

1200 (A) Be a required signatory party in all escrow agreements for the maintenance of reserve
1201 funds;

1202 (B) Be given notice of any asset management findings or reports, transfer of money in
1203 reserve accounts to fund necessary repairs, and any financial data and other information pursuant to the
1204 oversight of the Reserve Account within 30 days of any receipt or determination thereof;

1205 (C) Subordinate its rights and responsibilities under the escrow agreement, including those
1206 described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement
1207 subject to its ability to do so under the law and normal and customary limitations for fraud and other

1208 conditions contained in the Department's standard subordination clause agreements as modified from
1209 time to time, to include subsection (c) of this section.

1210 (2) The escrow agreement and subordination agreement, if applicable, shall further specify the
1211 time and circumstances under which the Department can exercise its rights under the escrow agreement
1212 in order to fulfill its obligations under §2306.186 and as described in this section.

1213 (3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a
1214 bond indenture or tax credit syndication or where there is no First Lien Lender but the allocation of
1215 funds by the Department and §2306.186 requires that the Department oversee a Reserve Account, the
1216 Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the
1217 Department to act as Bank Trustee as necessary under this section. The Department shall retain the right
1218 to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable
1219 by the Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice
1220 of all parties to the escrow agreement.

1221 (c) If the Department is not the First Lien Lender with respect to the Development, each Owner
1222 receiving Department assistance for multifamily rental housing shall submit on an annual basis within the
1223 Department's required Owner's Financial Certification packet a signed certification by the First Lien
1224 Lender including:

1225 (1) Reserve for replacement requirements under the first lien loan agreement;
1226 (2) Monitoring standards established by the First Lien Lender to ensure compliance with the
1227 established reserve for replacement requirements; and
1228 (3) A statement by the First Lien Lender

1229 (A) That the Development has met all established reserve for replacement requirements; or
1230 (B) Of the plan of action to bring the Development in compliance with all established reserve
1231 for replacement requirements, if necessary.

1232 (d) If the Development meets the minimum unit size described in subsection (a) of this section and
1233 the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or
1234 Bank Trustee, each Owner receiving Department assistance for multifamily rental housing shall set aside
1235 the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date
1236 described in subsection (f)(2) of this section through the appointment of an escrow agent as further
1237 described in subsection (b)(3) of this section.

1238 (e) If the Department is the First Lien Lender with respect to the Development, each Owner
1239 receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve
1240 Account through the date described in subsection (f)(2) of this section:

1241 (1) For new construction Developments:
1242 (A) Not less than \$150 per unit per year for units one to five years old; and
1243 (B) Not less than \$200 per unit per year for units six or more years old.

1244 (2) For rehabilitation Developments:
1245 (A) An amount per unit per year established by the Department's division responsible for
1246 credit underwriting based on the information presented in a Property Condition Assessment in
1247 conformance with §1.36 of this title; and
1248 (B) Not less than \$300 per unit per year.

1249 (3) For either new construction or rehabilitation Developments, the Owner of a multifamily
1250 rental housing Development shall contract for a third-party Property Condition Assessment meeting the
1251 requirements of §1.36 of this title and the Department will reanalyze the annual reserve requirement
1252 based on the findings and other support documentation.

1253 (A) A Property Condition Assessment will be conducted:
1254 (i) At appropriate intervals that are consistent with requirements of the First Lien
1255 Lender, other than the Department; or
1256 (ii) At least once during each five-year period beginning with the 11th year after the
1257 awarding of any financial assistance for the Development by the Department, if the Department is the
1258 First Lien Lender or the First Lien Lender does not require a third-party Property Condition Assessment.

1259 (B) Submission by the Owner to the Department will occur within 30 days of completion of
1260 the Property Condition Assessment and must include:
1261 (i) The complete Property Condition Assessment;
1262 (ii) First Lien Lender and/or Owner response to the findings of the Property Condition
1263 Assessment;
1264 (iii) Documentation of repairs made as a result of the Property Condition Assessment;
1265 and

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- 1266 (iv) Documentation of adjustments to the amounts held in the replacement Reserve
1267 Account based upon the Property Condition Assessment.
- 1268 (f) A Land Use Restriction Agreement or restrictive covenant between the Owner and the
1269 Department must require:
- 1270 (1) The Owner to begin making annual deposits to the reserve account on the later of:
- 1271 (A) The date that occupancy of the Development stabilizes as defined by the First Lien
1272 Lender or in the absence of a First Lien Lender other than the Department, the date the property is at
1273 least 90% occupied; or
- 1274 (B) The date that permanent financing for the Development is completely in place as defined
1275 by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date
1276 when the permanent loan is executed and funded.
- 1277 (2) The Owner to continue making deposits until the earliest of the following dates:
- 1278 (A) The date on which the Owner suffers a total casualty loss with respect to the
1279 Development;
- 1280 (B) The date on which the Development becomes functionally obsolete, if the Development
1281 cannot be or is not restored;
- 1282 (C) The date on which the Development is demolished;
- 1283 (D) The date on which the Development ceases to be used as a multifamily rental property;
- 1284 or
- 1285 (E) The later of
- 1286 (i) The end of the affordability period specified by the Land Use Restriction Agreement
1287 or restrictive covenant; or
- 1288 (ii) The end of the repayment period of the first lien loan.
- 1289 (g) The duties of the Owner of a multifamily rental housing Development under this section cease on
1290 the date of a change in ownership of the Development; however, the subsequent Owner of the
1291 Development is subject to the requirements of this section.
- 1292 (h) If the Department is the First Lien Lender with respect to the Development or the First Lien
1293 Lender does not require establishment of a Reserve Account, the Owner receiving Department assistance
1294 for multifamily rental housing shall submit on an annual basis within the Department's required Owner's
1295 Financial Certification packet:
- 1296 (1) Financial statements, audited if available, with clear identification of the replacement
1297 Reserve Account balance and all capital improvements to the Development within the fiscal year;
- 1298 (2) Identification of costs other than capital improvements funded by the replacement Reserve
1299 Account; and
- 1300 (3) Signed statement of cause for:
- 1301 (A) Use of replacement Reserve Account for expenses other than necessary repairs, including
1302 property taxes or insurance;
- 1303 (B) Deposits to the replacement Reserve Account below the Department's or First Lien
1304 Lender's mandatory levels as defined in subsections (c), (d) and (e) of this section; and
- 1305 (C) Failure to make a required deposit.
- 1306 (i) If a request for extension or waiver is not approved by the Department, Department action,
1307 including a penalty of up to \$200 per dwelling unit in the Development and/or characterization of the
1308 Development as Materially Non-Compliant, as defined in §60.1 of this title, may be taken when:
- 1309 (1) A Reserve Account, as described in this section, has not been established for the
1310 Development;
- 1311 (2) The Department is not a party to the escrow agreement for the Reserve Account;
- 1312 (3) Money in the Reserve Account
- 1313 (A) Is used for expenses other than necessary repairs, including property taxes or insurance;
- 1314 or
- 1315 (B) Falls below mandatory deposit levels;
- 1316 (4) Owner fails to make a required deposit;
- 1317 (5) Owner fails to contract for the third party Property Condition Assessment as required under
1318 subsection (e)(3) of this section; or
- 1319 (6) Owner fails to make necessary repairs, as defined in subsection (k) of this section.
- 1320 (j) On a case by case basis, the Department may determine that the money in the Reserve Account
1321 may:
- 1322 (1) Be used for expenses other than necessary repairs, including property taxes or insurance, if:
- 1323 (A) Development income before payment of return to Owner or deferred developer fee is
1324 insufficient to meet operating expense and debt service requirements; and

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1325 (B) The funds withdrawn from the Reserve Account are replaced as cashflow after payment
1326 of expenses, but before payment of return to Owner or developer fee is available.

1327 (2) Fall below mandatory deposit levels without resulting in Department action, if:

1328 (A) Development income after payment of operating expenses, but before payment of return
1329 to Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and

1330 (B) Subsequent deposits to the Reserve Account exceed mandatory deposit levels as cashflow
1331 after payment of operating expenses, but before payment of return to Owner or deferred developer fee
1332 is available until the Reserve Account has been replenished to the mandatory deposit level less capital
1333 expenses to date.

1334 (k) The Department or its agent may make repairs to the Development if the Owner fails to complete
1335 necessary repairs indicated in the submitted Property Condition Assessment or identified by physical
1336 inspection. Repairs may be deemed necessary if the Development is notified of the Owner's failure to
1337 comply with federal, state and/or local health, safety, or building code.

1338 (1) Payment for necessary repairs must be made directly by the Owner or through a replacement
1339 Reserve Account established for the Development under this section.

1340 (2) The Department or its agent will produce a Request for Bids to hire a contractor to complete
1341 and oversee necessary repairs.

1342 (l) This section does not apply to a Development for which the Owner is required to maintain a
1343 Reserve Account under any other provision of federal or state law.

5a

BOARD ACTION REQUEST

SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION

JANUARY 14, 2021

Presentation, discussion, and possible action on the Dispute of EARAC's Emergency Solutions Grants Coronavirus Aid, Relief, and Economic Security Act first allocation award recommendation for Galveston County Community Action Council, Inc. and approval of an award to The Salvation Army, Inc. serving Galveston County

RECOMMENDED ACTION

WHEREAS, on July 23, 2020, the Board approved awards to subrecipients for Emergency Solutions Grants Coronavirus Aid, Relief, and Economic Security Act first allocation (ESG CARES 1) funds received from the U.S. Department of Housing and Community Affairs (HUD) conditioned upon final Previous Participation Review (PPR) review and recommendation by the Executive Award Review and Advisory Committee (EARAC);

WHEREAS, a conditional award of ESG CARES 1 funds to Galveston County Community Action Council, Inc. (GCCAC) in the amount of \$257,000 was approved by the Board subject to the condition;

WHEREAS, upon completion of the PPR, the award to GCCAC was not recommended by the Single Family and Homeless Program Division or Compliance Division to EARAC for approval of the award;

WHEREAS, GCCAC submitted a timely filed Dispute of staff's decision in accordance with the requirements of 10 TAC §1.303(g)(4);

WHEREAS, 10 TAC §1.303(g)(2) allows a Dispute of an EARAC recommendation to be heard by the Board without further EARAC consideration;

WHEREAS, 10 TAC §1.303(h) grants the Board authority to accept, reject, or modify any EARAC recommendations in response to a Dispute;

WHEREAS, the reason for the denial relates to GCCAC's inability to sufficiently serve its clients with other Department funds for which the Department has initiated a process of removing GCCAC's status as a subrecipient of funds, and because GCCAC is making efforts to achieve performance for those contracts through a self-imposed Quality Improvement Plan, staff does not recommend providing GCCAC with a ESG CARES contract and HUD funds that may detract from their ability to focus on their performance under other Department contracts;

WHEREAS, staff's recommendation to deny this request has taken into consideration that other ESG CARES 1 funds have been awarded within Galveston and ESG CARES 2 funds are being considered for awards at this Board meeting to other entities serving the same area as GCCAC, and therefore denial of GCCAC's ESG CARES 1 request does not limit the delivery of ESG CARES resources in the area; and

WHEREAS, staff has identified that the funds previously identified for GCCAC be awarded instead to The Salvation Army, Inc. serving Galveston County;

NOW, therefore, it is hereby

RESOLVED, that the Board accepts staff's recommendation to both deny the GCCAC's Dispute of the EARAC recommendation, and deny the ESG CARES 1 award to GCCAC; and

FURTHER RESOLVED, that the \$257,000 of ESG CARES 1 funds be provided to The Salvation Army, Inc. serving Galveston County.

BACKGROUND

The Department received an allocation of \$33.3 million for ESG CARES 1 for Fiscal Year 2020 from the U.S. Department of Housing and Urban Development (HUD) on March 27, 2020. On April 23, 2020, the Board approved a plan to program the ESG CARES 1 funds, including local distribution of funds awards as recommended by Continuum of Care (CoC) lead agencies.

The Texas Homeless Network (THN), who is the CoC Lead Agency for the Balance of State, recommended fourteen entities to the Department for award. Galveston County Community Action Council, Inc. (GCCAC) was recommended by THN to receive an award of \$257,000 of the \$7,272,289 in total funds awarded to the BoS CoC region. The Board approved the recommendation on July 23, 2020, conditioned upon final Previous Participation Review (PPR) clearance and recommendation by the Executive Award Review and Advisory Committee (EARAC).

On November 30, 2020, GCCAC was notified by staff that the Program and Compliance Divisions did not recommend GCCAC's application for an award of ESG CARES 1 funds to EARAC, and notified them since there was not a recommendation of an award to EARAC, EARAC would recommend Denial of the award to the Board. This notification is included in this board action request as Attachment 1.

On December 7, 2020, GCCAC submitted a written Dispute of EARAC's recommendation in accordance with 10 TAC §1.303(g), included in this board action request as Attachment 2. The Dispute stated that as of a TDHCA monitoring visit in 2020, GCCAC has no findings other than a finding related to tripartite compliance of their board composition, and that their 2019 single audit found no issues of

noncompliance. They reiterated that they have improved their organizational standards, and that their application was ranked third overall in THN's BoS ESG CARES 1 application cycle.

While it is true that GCCAC currently has no findings from TDHCA's monitoring staff, GCCAC has been notified of the Department's intent to remove contracts and the recurrent subrecipient status of GCCAC for both the Low Income Home Energy Assistance Program (LIHEAP) and the Community Services Block Grant Program due to their inability to sufficiently assist clients and expend funds. In November 2020, GCCAC established a self-imposed Quality Improvement Plan and the Department has provided them with an opportunity to achieve their self-identified expenditure benchmarks by the end of January, which will be reflected in reporting of February 15, 2021. GCCAC has been notified that the January reports they submit and the results of their efforts in achieving their benchmarks will be the basis for a Board action in March 2021.

The ESG CARES 1 HUD funds are significantly different from the funding that GCCAC currently administers including, but not limited to, the following factors: the 24 CFR Part 5 definition of income must be used; the definition of homelessness or at-risk of homelessness must be met and documented; and the funds require different reporting systems both at TDHCA and for HUD. According to its most recent single Audit, GCCAC did not administer HUD funding in 2018 or 2019. Because of the significantly new requirements associated with ESG funding, and GCCAC's history of returning Department funding, staff does not believe providing GCCAC with a new source of funds at this time is a prudent use of ESG CARES funds, particularly considering that other ESG subrecipients in the Galveston area will be in a position to provide similar assistance. In response to EARAC's recommendation of denial, staff has reached out to THN to determine the use of the funds that had been conditionally awarded to GCCAC, and THN has stated that if the Board accepts EARAC's recommendation, the \$257,000 (previously identified for GCCAC) be utilized to increase the amount of the award to The Salvation Army, Inc., serving Galveston County. Galveston County is also served with ESG CARES funding by Lone Star Legal Aid, Resource and Crisis Center of Galveston County, Inc., and The Children's Center. Two additional counties in GCCAC's service area, Brazos County and Wharton County, are anticipated to be served by subrecipients awarded funding under the second allocation of ESG CARES funding, which is included as a different item at today's meeting.

Staff recommends that the Board accept the recommendation of EARAC to deny the dispute submitted by GCCAC and to authorize the award of \$257,000 to The Salvation Army, Inc. serving Galveston County, pending EARAC approval or approval with conditions.

From: [Rosy Falcon](#)
To: [Quintero, Robert](#)
Cc: [Abigail Versyp](#); [Earnest Hunt](#); [Naomi Cantu](#); [Brooke Boston](#)
Subject: EARAC Results for ESG Funds
Date: Monday, November 30, 2020 5:04:57 PM

Good afternoon,

The Program and Compliance Divisions are not recommending Galveston County Community Action Council, Inc's application for an ESG CARES award.

By not receiving a favorable recommendation or recommendation with conditions by both Divisions, GCCAC's application is Denied; therefore, EARAC's recommendation to the Board will be Denial. As per 10 TAC §1.303 (g) (2) if you do not agree with the conditions proposed by EARAC you may submit to the Department a letter to the attention of Brooke Boston, EARAC Chair, setting forth your Dispute. Please refer to 10 TAC §1.303 (g) for the details that must be included in your correspondence.

Your written Dispute must be filed not later than the 7th day of the receipt of this notification.

If you have any questions regarding this process please do not hesitate to contact me via email at Rosy.Falcon@tdhca.state.tx.us or Earnest Hunt at Earnest.Hunt@tdhca.state.tx.us

Thank you,

Rosy L. Falcon

Senior Monitor

Compliance Subrecipient Monitoring

Texas Department of Housing and Community Affairs

221 East 11th Street · Austin, TX 78701

512-936-7810

512-475-3935 Fax

Rosy.Falcon@tdhca.state.tx.us

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.

Galveston County Community Action Council, Inc.

Joe Compian
Board President

Robert M. Quintero
Executive Director

Telephone (409) 765-7878
Fax Number (409) 765-9951
4700 Broadway Suite C109
P.O. Box 3206
Galveston, Texas 77552

December 7, 2020

Ms. Brooke Boston
Texas Department of Housing and Community Affairs
Austin, Texas

RE: ESG CARES FUNDS EARAC Results

Dear Ms. Boston:

This letter is in response to Texas Department of Housing and Community Affairs (TDHCA) previous correspondence to Galveston County Community Action Council (GCCAC) outlining the denial of the Emergency Solutions Grant (ESG) CARES Funding.

In accordance with 10 TAC §1.303 (g) and in reference to the ESG application submitted to the Texas Homeless Network and determined not to be favorable for funding by TDHCA.

It was stated that because of past performance of GCCAC funding for the ESG CV19 will not be awarded to GCCAC.

How long will GCCAC pay for things that happened way before the current staff was working with the agency? GCCAC was monitored in the Spring 2020. There were no findings in programs or finances of GCCAC. The only finding was the board representation for Wharton County in the tripartite compliance. An explanation because of COVID 19 Coronavirus made it unreasonable and unsafe to actively recruit board members was given to TDHCA and accepted. We will begin to fill those positions as soon as possible.

In addition, the 2019 single audit was performed by an independent auditing firm and it came back with no findings. Once again illustrating that GCCAC has moved in the right direction to thrive in all areas of the organization.

TDHCA itself has recognized the GCCAC has improved through the Organizational Standards. When the current staff administrative started at GCCAC the Organizational Standards were in the teens. This fall GCCAC received a 75 in scoring demonstrating vast improvement every year and it continues to get better for GCCAC.

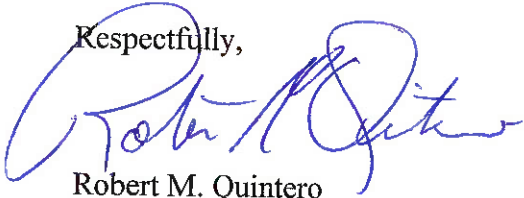
GCCAC received the third highest score of all the applications that were submitted. We currently have the finest staff we have ever had with the desire to succeed. ON a side note, we have two

homeless people that have lived in the GCCAC parking lot. Staff have offered them our services but have been turned down from the two individuals. We want to assist these two individuals and the many more homeless who are in the GCCAC service area. We can and will with the ESG CARES grant funding. However, TDHCA needs to allow GCCAC to do the work we are supposed to do and assist the community most at need of our services.

There were no conditions placed on GCCAC, just a denial to allow our agency to help the most indigent people in our community. If EARAC, wished to put conditions on funding and they are "fair" conditions, GCCAC will accept them but let me re-emphasis as long as the conditions are "fair".

Ms. Boston, GCCAC is requesting a hearing to dispute the reasoning and ultimate decision not to fund the ESG CARE grant. I look forward to hearing from you. If you have any question, please feel free to contact me at (409)256-9602 (cell), this number is always on me as I travel from office to office.

Respectfully,



Robert M. Quintero
Executive Director

5b

BOARD ACTION REQUEST

SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION

JANUARY 14, 2021

Presentation, discussion, and possible action on Emergency Solutions Grants Coronavirus Aid, Relief, and Economic Security Act second allocation awards

RECOMMENDED ACTION

WHEREAS, on June 9, 2020, the U.S. Department of Housing and Urban Development (HUD) released the second allocation of the \$4 billion available through the CARES Act for the Emergency Solutions Grants Program (ESG) nationally, of which \$64,537,937 was allocated to the Texas Department of Housing and Community Affairs (the Department);

WHEREAS, \$3,232,247 is anticipated to be retained by TDHCA for administration, which may be reprogrammed to other activities;

WHEREAS, the Board approved a plan on October 8, 2020, to program the second allocation of ESG CARES funds for awards: to be locally distributed for rapid re-housing and homelessness prevention as recommended by Continuum of Care (CoC) lead agencies; to support Homeless Management Information System (HMIS) reporting; and to be used for TDHCA administrative expenses;

WHEREAS, HUD Community Planning Development Notice 20-08 requires the Department to award ESG funds within 240 days of receipt of the award letter from HUD, which was received May 19, 2020;

WHEREAS, approximately \$274,649 is presented for award for Homeless Management Information System (HMIS) and HMIS-comparable database support and Sage reporting;

WHEREAS, nine CoC lead agencies administered a local subrecipient selection process;

WHEREAS, two CoC Regions did not have CoC lead agencies to coordinate the subrecipient selection process and the Department offered to award funds directly to organizations in those areas; and

WHEREAS, program staff is recommending the attached list of awards conditioned on final recommendations from the Compliance Division for purposes of a recommendation or recommendation with conditions from the Executive Review and Advisory Committee, totaling \$61,305,690 in ESG CARES second allocation awards;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate awards totaling \$61,305,690 for ESG CARES second allocation, pending the Executive Award Approval and Advisory Committee (EARAC) review and approval or approval with conditions;

RESOLVED, that EARAC has recommended the award for the Tracy Andrus Foundation to be approved with the condition that its registration with the Texas Secretary of State be current and correct before contract execution, but no later than March 15, 2021, although this date may be extended upon request by the Executive Director or designee for good cause for up to 30 additional days; and

FURTHER RESOLVED, should funds under any ESG CARES first or second allocation contracts be returned or made available, those funds may be reallocated at the discretion and authority of the Executive Director or designee to other contracts awarded under ESG CARES that have shown a high percentage of expenditure and percentage of positive outcomes for persons experiencing or at-risk of homelessness performance.

BACKGROUND

On March 27, 2020, the CARES Act was signed into law. The CARES Act provides for \$4 billion to be distributed through the ESG Program nationally and includes waivers of certain provisions of the ESG regulations. The ESG Program is a HUD-funded program designed to assist people experiencing homelessness or at-risk of homelessness to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness.

ESG CARES funds were coordinated with CoC lead agencies. A CoC is a group composed of representatives of local governments and service providers organized to plan for and provide a system of outreach, emergency shelter, and housing strategies to address the various needs of homeless persons and persons at risk of homelessness for a specific geographic area. A CoC lead agency is the CoC collaborative applicant in the HUD CoC Program per 24 CFR §578.3. Grantee recipients of ESG are required to coordinate their ESG programming with CoC organizations per 24 CFR §576.400(a).

The first allocation of ESG CARES Act funding (ESG CARES 1) released by HUD allocated \$33,254,679 to the Texas Department of Housing and Community Affairs. This funding has been programmed for street outreach, emergency shelter, rapid re-housing and homelessness prevention. Approximately \$12.5 million was awarded to existing ESG Subrecipients; \$17.2 million was awarded through a separate competition; and \$1.9 million was awarded to legal service providers and HMIS support. ESG CARES 1 funding was awarded in every Continuum of Care (CoC) region in Texas, which has not occurred with ESG funding in the last five years. Continued outreach to TX-624 Wichita Falls and TX-701 Bryan/College

Station resulted in ESG CARES awards in those two regions, which had not participated in TDHCA's ESG program in over six years.

The Department's 2020 One Year Action Plan outlined that ESG CARES second allocation funding (ESG CARES 2) is programmed for rapid re-housing, homelessness prevention, Homeless Management Information System (HMIS), and administration. ESG CARES 2 funds are subject to a series of flexibilities, waivers, and restrictions, as outlined by the ESG CARES Act, HUD waivers accepted by the Department effective April 5, 2020, and the HUD CPD notice 20-08 released September 1, 2020. Under ESG CARES second allocation, rental assistance can be provided for up to 12 months, with an additional six months' worth of rental arrears and late fees in a one-time payment, as applicable. Another funding category that is closely related to rental assistance under ESG is called housing relocation and stabilization services, which can include rental application fees, security deposits, last month's rent, utility deposits, utility payments, moving costs, and landlord incentives. Both rental assistance and housing relocation and stabilization services are covered under the broad categories of rapid re-housing and homelessness prevention. The second round of ESG CARES funds was approved with a 25% variation among activities as deemed necessary by the Executive Director or designee.

For ESG CARES 2, ESG Coordinators developed and use scoring criteria that included at minimum:

1. Past expenditure rates of CoC, ESG, or other grant funding;
2. The organization's demonstrable history and familiarity with operating the type of activity for which it will receive funding (e.g., rapid rehousing, homelessness prevention, rental assistance provision);
3. The organization's experience serving the population experiencing homelessness and at severest risk of complications from coronavirus (e.g., individuals experiencing homelessness over age 50, persons with disabilities);
4. Previous performance of the organization in providing housing, shelter, or services to individuals and families experiencing or at risk of homelessness (e.g., the length of time individuals and families remain homeless before they are housed, overall reduction in the number of homeless individuals and families, success at reducing the number of individuals and families who become homeless, etc.);
5. The organization's plan to use landlord incentives, as allowed in HUD CPD Notice 20-08; and
6. The organization's plan to collaborate with landlords that shows staff members identified to conduct outreach to and negotiation with owners as outlined in 24 CFR §576.105(b).

As stated in the funding plan, \$61,031,041 of the second allocation was designated for either Subrecipients recommended by the CoC Lead Agencies, or for Subrecipients identified by the Department based on CoC funding awards. Staff contracted with nine CoC Lead Agencies to coordinate the selection process:

1. TX-500 San Antonio/Bexar County - South Alamo Regional Alliance for the Homeless
2. TX-503 Austin/Travis County - Ending Community Homelessness Organization
3. TX-600 Dallas/Irving/Dallas County - Metro Dallas Homeless Alliance
4. TX-601 Fort Worth/Arlington/Tarrant County - Tarrant County Homeless Coalition
5. TX-603 El Paso/El Paso County - El Paso Homeless Coalition
6. TX-607 Balance of State – Texas Homeless Network

7. TX-611 Amarillo – City of Amarillo
8. TX-624 Wichita Falls, Wise, Palo Pinto, Wichita, and Archer counties – NorTex Regional Planning Commission
9. TX-700 Houston/Fort Bend/Harris/Montgomery Counties – Coalition for the Homeless of Houston

The CoC lead agencies that performed a local subrecipient selection process were responsible for the development of an abbreviated and streamlined application format and process, application review and evaluation, and recommendation of awards to the Department by December 4, 2020. Staff again extends their sincere appreciation to these organizations for stepping up to this role.

ESG Subrecipients recommended for an award were contacted by TDHCA for a full application packet. If the agency was not responsive, or does not pass EARAC approval, TDHCA could deny ESG CARES funding and move to the next ESG CARES recommended awardee in the ranked order provided by the CoC lead agency. For this purpose, applicants were designated as primary for a recommended award, or backup, for a recommendation of an award if a primary recommendation was not responsive or is not recommended by EARAC for an award. If a backup is eligible for an award, the amount will be either (1) the amount they requested or (2) what is available after a primary awardee does not receive an award, whichever is less.

Recommendations by the CoC Lead Agency have been reviewed by TDHCA and are also subject to a final recommendation for approval or approval with conditions by EARAC. Any awards are subject to EARAC recommendation or recommendation with conditions. The Attachments A and B identify which entities have not completed the Previous Participation Process. EARAC has recommended the award for the Tracy Andrus Foundation to be approved with the condition that its registration with the Texas Secretary of State be current and correct before contract execution, but no later than March 15, 2021, although this date may be extended upon request by the Executive Director or designee for good cause for up to 30 additional days.

The two CoC Regions that did not have a CoC lead agency coordinating the subrecipient selection process are TX-701 Bryan/College Station and TX-624 Waco/McLennan County. TDHCA reached out to eligible organizations in those CoC regions that had previously been awarded certain types of CoC funding (awards made prior to the CARES Act funds directly by HUD to the organizations). From those efforts, two organizations submitted Applications for ESG CARES funding to TDHCA, as shown in Attachment A. The total requested funds equaled \$2,363,588 which was the total available funds for award in the regions.

All recommended awardees for homelessness prevention and rapid re-housing are reflected in Attachment A. ESG CARES 2 builds on the successful expansion of ESG CARES 1 in which funds were recommended for award in every CoC region in Texas. Staff is pleased to report that ESG CARES 2 funding is available for persons experiencing homelessness or at-risk of homelessness in every county in Texas. Special recognition goes to Texas Homeless Network (THN) and Endeavors for this accomplishment. Texas Homeless Network (THN) is the CoC lead for the Balance of the State CoC, which has 215 counties and is the largest in Texas. Endeavors is a nonprofit organization based in San Antonio Texas. THN and

Endeavors are working together to provide access to ESG CARES 2 in the 95 counties for which there were no applicants.

Finally, funds were offered to the CoC lead agencies and HMIS lead agencies for HMIS and HMIS-comparable database support and Sage reporting. Quarterly reporting into the HUD online system called Sage is a new requirement for ESG CARES that is not required for ESG annual funds. Recommendations for HMIS support are reflected in Attachment B.

If ESG CARES second allocation contracts are returned or otherwise made available, those funds may be reallocated at the discretion and authority of the Executive Director to other contracts awarded under ESG CARES that have shown a high percentage of expenditure and percentage of positive outcomes for persons experiencing or at-risk of homelessness performance. ESG CARES 2 funding may be re-programmed in any ESG CARES program component: street outreach, emergency shelter, homelessness prevention, and rapid re-housing. ESG CARES Subrecipients eligible for this reallocation of funding must be in good standing with the Department which includes, but is not limited to, not owing the Department any disallowed funding or other payments without being current on an approved repayment plan, and being current on their single audit requirement (if applicable).

Staff recommends the awards conditioned on EARAC recommendation or recommendation with conditions, as reflected herein and in the Attachments.

Attachment A – Award Recommendations through Local Subrecipient Selection Process or Continuum of Care Awardee Offers¹

TX-500, San Antonio/Bexar County

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
500	San Antonio Christian Hope Center	\$525,000.00	\$525,000.00	Primary
500	Beat AIDS	\$570,999.00	\$570,999.00	Primary
500	Family Endeavors, Inc., dba Endeavors	\$2,029,347.00	\$2,029,347.00	Primary
500	Haven for Hope	\$695,100.00	\$695,100.00	Primary
	TX-500 San Antonio/Bexar County Total	\$3,820,446.00	\$3,820,446.00	

TX-503, Austin/Travis County

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
503	Family Eldercare	\$1,224,564	\$1,224,564	Primary
503	Foundation for the Homeless, Inc.	\$812,288	\$566,888	Primary
503	Srv2Thrv Foundation	\$905,991	\$0	Backup
503	Youth and Family Alliance dba LifeWorks	\$1,025,636	\$1,025,636	Primary
	TX-503 Total	\$3,968,479	\$2,817,088	

TX-600, Dallas City & County/Irving

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
600	Bridge Steps	\$799,890	\$799,890	Primary
600	Brighter Tomorrows*	\$525,000	\$500,000	Primary
600	Catholic Charities of Dallas, Inc.	\$1,475,503	\$1,311,703	Primary
600	Family Gateway Inc	\$533,910	\$533,910	Primary
600	First Presbyterian Church of Dallas, Texas dba The Stewpot	\$788,492	\$500,000	Primary
600	Helen's Project	\$36,000	\$0	Backup
600	Hope's Door Inc.	\$500,000	\$500,000	Primary

¹ The asterisk reflects conditional awards to entities that do not yet have a complete review from EARAC.

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
600	Maurice Barnett Geriatric Wellness Center, Inc	\$3,520,000	\$504,000	Primary
600	Metro Dallas Homeless Alliance	\$500,040	\$500,040	Primary
600	Metrocrest Services, Inc	\$1,000,003	\$970,003	Primary
600	Shared Housing Center, Inc. - Rapid Re-housing	\$500,000	\$296,732	Primary
600	Shared Housing Center, Inc. - Homelessness Prevention and Rapid Re-housing	\$218,105	\$0	Backup
600	The Family Place	\$672,000	\$672,000	Primary
600	Under 1 Roof - Rapid Re-housing	\$147,000	\$0	Backup
600	Under 1 Roof - Homelessness Prevention	\$1,111,625	\$545,000	Primary
	TX-600 Dallas City & Irving County Total	\$12,327,568	\$7,633,278	

TX-601, Fort Worth/Arlington, Tarrant County

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
601	Tarrant County	\$2,000,000	\$2,000,000	Primary
601	Tarrant County Homeless Coalition	\$537,894	\$537,894	Primary
601	The Salvation Army (Mabee Center)	\$1,000,000	\$1,000,000	Primary
	TX-601 Fort Worth/Arlington/Tarrant County Total	\$3,537,894	\$3,537,894	

TX-603, El Paso City & County

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
603	El Paso Coalition for the Homeless	\$152,812	\$152,812	Primary
603	El Paso Human Services	\$590,000	\$590,000	Primary
603	La Posada Home, Inc.	\$590,000	\$590,000	Primary
603	Project VIDA	\$590,000	\$590,000	Primary
	TX-603 El Paso City/County Total	\$1,922,812	\$1,922,812	

TX-604, Waco, McLennan County

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
604	Salvation Army (Waco)	\$1,111,085	\$1,111,085	n/a
	TX-604 Waco/McLennan County Total	\$1,111,085	\$1,111,085	

TX-607, Balance of State

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
607	Ark-Tex Council of Governments	\$528,000	\$0	n/a
607	Aspermont Small Business Development Center, Inc.	\$502,500	\$502,500	Primary
607	Brown County Home Solutions Inc	\$1,550,049	\$0	n/a
607	Castle Cares Community Ministries/The Warrior's Refuge	\$741,111	\$0	n/a
607	Catholic Charities of the Rio Grande Valley, Inc.	\$1,750,517	\$1,750,517	Primary
607	Central Texas Opportunities, Inc. dba Cornerstone Community Action Agency	\$1,293,147	\$0	n/a
607	Christian Community Action	\$1,543,100	\$0	n/a
607	Comal County Family Violence Shelter Inc.	\$652,050	\$0	n/a
607	Community Action Committee of Victoria, Texas	\$500,000	\$0	n/a
607	Community Action, Inc. of Central Texas	\$2,635,604	\$0	n/a
607	Community Resource Centers of Texas, Inc.	\$741,519	\$0	n/a
607	Concho Valley Community Action Agency	\$2,828,000	\$2,828,000	Primary
607	Economic Action Committee of the Gulf Coast	\$504,853	\$0	n/a
607	Families In Crisis, Inc.	\$843,990	\$0	n/a
607	Family Endeavors, Inc., dba Endeavors	\$12,613,850	\$12,613,850	Primary
607	Gulf Coast Attainable Housing Foundation	\$1,022,500	\$0	n/a
607	Homeless Network of Texas dba Texas Homeless Network	\$150,000	\$150,000	Primary

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
607	Housing Authority of the City of Pharr	\$644,500	\$0	n/a
607	Housing Authority of the City of Texarkana, Texas	\$1,077,206	\$0	Backup
607	Loaves & Fishes of the Rio Grande Valley, Inc.	\$507,150	\$507,150	Primary
607	Making Dreams Real, Inc.	\$775,076	\$0	n/a
607	Mid-Coast Family Services	\$674,800	\$674,800	Primary
607	Panhandle Community Services	\$1,418,128	\$1,418,128	Primary
607	Rising Tide Ministries	\$766,000	\$0	n/a
607	Taylor Housing Authority	\$1,120,800	\$0	Backup
607	The Children's Center, Inc.	\$1,000,000	\$0	Backup
607	The Chosen Ones Outreach Ministries of Galveston, Inc.	\$1,360,000	\$1,360,000	Primary
607	The Salvation Army (Abilene)	\$873,000	\$0	n/a
607	The Salvation Army (Beaumont)	\$525,300	\$0	n/a
607	The Salvation Army (Grayson County)	\$540,440	\$0	n/a
607	The Salvation Army (Lufkin)	\$628,028	\$0	n/a
607	The Salvation Army (Bell County)	\$758,000	\$758,000	Primary
607	Tracy Andrus Foundation ²	\$1,730,000	\$1,730,000	Primary
607	United Way of Amarillo & Canyon	\$520,240	\$0	n/a
607	United Way of Denton County, Inc.	\$3,300,333	\$3,300,333	Primary
	TX-607 Texas Balance of State Total	\$48,619,791	\$27,593,278	

TX-611, Amarillo

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
611	City of Amarillo	\$865,899	\$865,899	Primary
611	Salvation Army (Amarillo)*	\$500,000	\$500,000	Primary
	TX-611 Amarillo CoC Total	\$1,365,899	\$1,365,899	

² Conditioned as reflected in the BAR.

TX-624 Wichita Falls/Wise, Palo Pinto, Wichita, Archer Counties

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
624	Nortex Regional Planning Commission	\$541,750	\$926,116	Primary
	TX-624 Wichita Falls/Wide, Palo Pinto, Wichita, and Archer Counties Total	\$541,750	\$926,116	

TX-700, City of Houston/Fort Bend, Harris, and Montgomery Counties

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
700	Alliance of Community Assistance Ministries, Inc. (dba ACAM)	\$1,373,697	\$1,373,697	Primary
700	Catholic Charities of Galveston-Houston	\$1,614,375	\$1,614,375	Primary
700	Houston Area Women's Center	\$1,858,500	\$1,858,500	Primary
700	The Montrose Center	\$630,000	\$630,000	Primary
700	Spring Branch Community Health Center	\$2,804,000	\$2,804,000	Primary
700	West Houston Assistance Ministries, Inc.	\$770,070	\$770,070	Primary
	TX-700 Houston/Fort Bent, Harris, and Montgomery Counties Total	\$9,050,642	\$9,050,642	

TX-701 Bryan/College Station/Brazos Valley

CoC Region	Agency	Total requested	Total Recommended	Primary/Backup
701	Twin City Mission, Inc	\$1,252,503	\$1,252,503	n/a
	TX-701 Bryan/College Station/Brazos Valley Total	\$1,252,503	\$1,252,503	

Attachment B – Award Recommendations for HMIS/HMIS-comparable database support

CoC Region	Agency	Total Recommended
603	El Paso Coalition for the Homeless	\$40,000.00
503	Ending Community Homelessness Coalition, Inc.	\$4,329.00
600	Metro Dallas Homeless Alliance	\$37,388.00
601	Tarrant County Homeless Coalition	\$15,000.00
multiple	Texas Council on Family Violence	\$49,965.00
607	Homeless Network of Texas dba Texas Homeless Network	\$58,800.00
701	Twin City Mission, Inc	\$69,167.00
	Total HMIS support	\$274,649

6

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

7a

BOARD ACTION REQUEST

BOND FINANCE DIVISION

JANUARY 14, 2021

Presentation, discussion, and possible action on Inducement Resolution No. 21-008 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Meadowbrook (#21604)

RECOMMENDED ACTION

WHEREAS, a bond pre-application, 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. 21-008 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 the pre-applications listed herein, is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: 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 180 days to close on the private activity bonds.

During the 180-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 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 \$40M in private activity bond volume cap. Staff notes that the Department's set-aside for the 2021 program year is \$169,558,383. Reservations for those applications that participated in the 2021 Private Activity Bond Lottery total \$158,000,000, reducing the Department's available set-aside to \$11,558,383. The Department filed 2020 Carryforward in the amount of \$192,000,000 for those applications submitted as part of the August 15th collapse. This will bring the total in reserved applications to \$350,000,000 that the Department anticipates issuing in 2021. The pre-application listed below will be placed on the Department's waiting list to receive a Reservation, bringing the total of pre-applications on the waiting list to \$40M.

21604 – Meadowbrook

New construction of 216 units is proposed for this multifamily development to be located at 15251 Seagoville Road in Dallas, Dallas County. This transaction is proposed to be Priority 3 and will serve the general population. The applicant has elected an intent to use income averaging for the development. 196 of the units will be rent and income restricted at 60% of Area Median Family Income (AMFI), and the remaining twenty units will be market rate. The Department has received no letters of support or opposition for the proposed development.

Bond Inducement Amount: \$40,000,000

RESOLUTION NO. 21-008

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS OR NOTES 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 or notes 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 or notes; 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 or notes; and

WHEREAS, it is proposed that the Department issue its revenue bonds or notes 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 acquisition, construction, reconstruction or renovation of 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 some or all of 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 or notes 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 or Notes (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 or notes 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 or a portion of the 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, reconstruction or renovation, as applicable, 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 and equipping 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 certain 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 aggregate 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, rehabilitating, or reconstructing, as applicable, improving, equipping, 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 or notes); (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 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 Multifamily Bonds, 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 Governing 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 Section 2306.032 of the Texas Government Code, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act regarding meetings of the Governing Board.

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

PASSED AND APPROVED this 14th day of January, 2021.

EXHIBIT "A"

Descriptions of the Owners and the Developments

Project Name	Owner	Principals	Amount Not to Exceed
Meadowbrook Apartments	LDG Meadowbrook, LP, a Texas limited partnership	General Partner/Member: LDG Meadowbrook GP, LLC, a Texas limited liability company	\$40,000,000
Costs: Acquisition/construction of a 216-unit affordable, multifamily housing development to be known as Meadowbrook Apartments, located on 15251 Seagoville Road, Dallas, Dallas County, Texas 75253			

7b

BOARD ACTION REQUEST
BOND FINANCE DIVISION
JANUARY 14, 2021

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (The Montage Apartments) Series 2021 Resolution No. 21-009, and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted an inducement resolution for the Montage Apartments at the Board meeting of June 25, 2020;

WHEREAS, an application for the Montage Apartments requesting 4% Housing Tax Credits, sponsored by Saddlespur Pass Apartments SLP, LLC, and Bexar Management Development Corporation was submitted to the Department on October 2, 2020;

WHEREAS, a Certification of Reservation was issued in the amount of \$35,000,000 on September 16, 2020, with a bond delivery deadline of March 15, 2021;

WHEREAS, in accordance with 10 TAC §1.301(f), the compliance history is designated as a Category 2 and deemed acceptable by the Executive Award and Review Advisory Committee (EARAC); and

WHEREAS, EARAC recommends approval of the issuance of Multifamily Housing Revenue Bonds (Series 2021) for the Montage Apartments and the issuance of a Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of tax-exempt, unrated Multifamily Housing Revenue Bonds (The Montage Apartments) Series 2021 in the amount of \$34,000,000, Resolution No. 21-009, is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of \$1,914,402 in 4% Housing Tax Credits for The Montage Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Tex. Gov't Code §2306.353 *et seq.*, which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Development Information: The Montage Apartments are to be located at 7554 FM 78 in San Antonio, Bexar County, and proposes the new construction of 216 units that will serve the general population. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served, however, the application reflects all 216 of the units will be rent and income restricted at 60% of AMFI.

Organizational Structure and Previous Participation: The Borrower is Saddlespur Pass Apartments, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC.

Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing/Public Comment: In light of COVID-19 and the inability for an in-person TEFRA hearing to be held, staff conducted a telephonic hearing, in accordance with IRS guidance, for the proposed development on December 8, 2020. Given that it was via telephone and would ordinarily be difficult to discern exactly how many individuals participated in the hearing, there is an option on the call line to obtain a participant count. For this hearing there were five attendees, which represented staff conducting the hearing and representatives from the applicant. A copy of the hearing transcript is included herein. The Department has received sixteen letters of opposition for the proposed development, including three from Bexar County Commissioner for Precinct 4, Tommy Calvert. In addition, the Department has received two separate petitions containing a total of 351 signatures from members of the surrounding neighborhoods expressing opposition to the development. Because these petitions were submitted at different times during the application process, it is possible that there are duplicate signatures between the two. These letters and petitions are included herein. The Department has received no letters of support for the proposed development.

Summary of Financial Structure

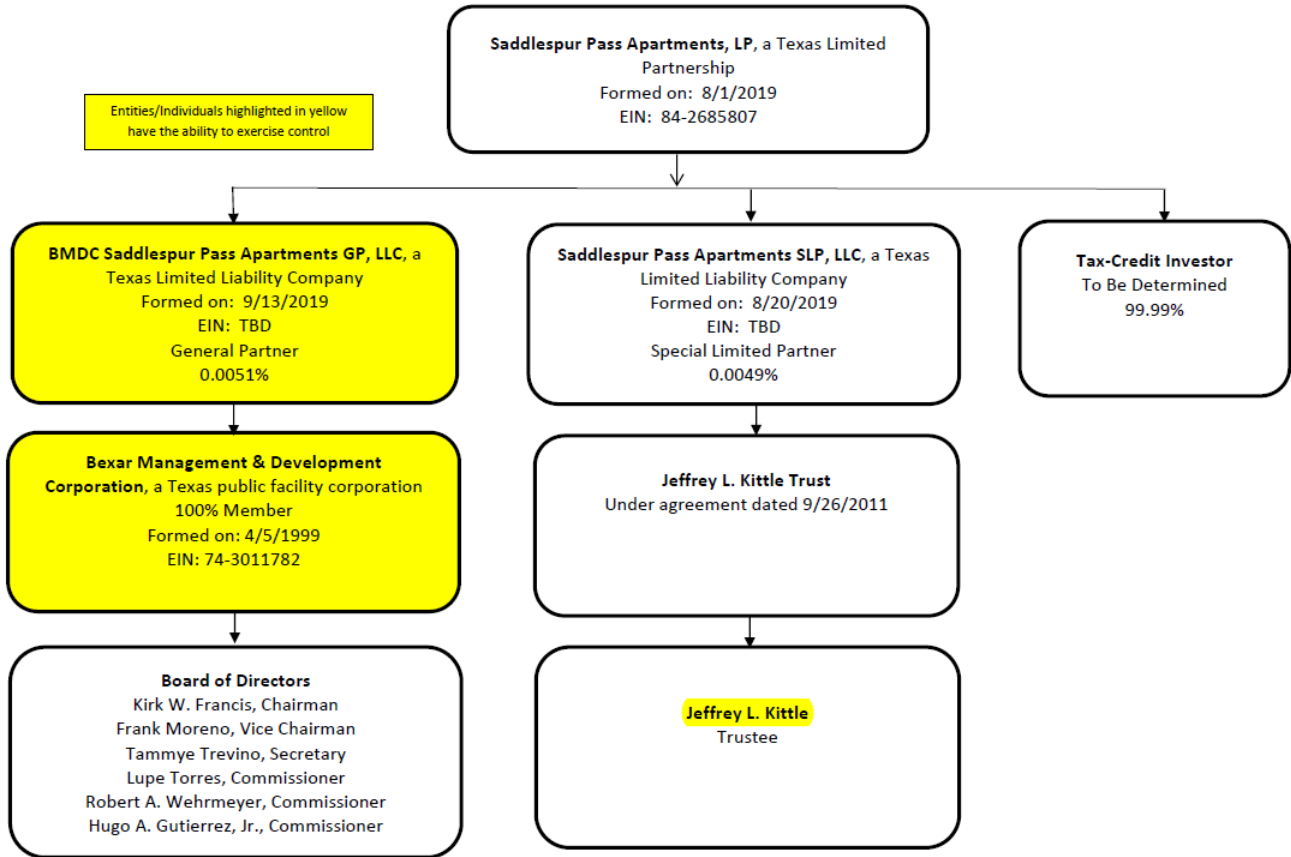
Under the proposed structure, the Department will issue unrated tax-exempt fixed rate bonds in the amount of \$34,000,000 that will be initially purchased by RedStone, who will be serving as both construction and permanent lender. At or prior to stabilization, as defined in the bond documents, approximately \$13,00,000 of the bonds will be redeemed at par and the permanent bond amount is anticipated to be \$22,000,000. The RedStone term sheet also provides for an interest-only period of 60 months beginning after stabilization is reached.

The interest rate on the bonds will be based on the 3-Month LIBOR rate and fixed prior to closing at a rate of approximately 3.85%, as more appropriately described in the bond resolution attached hereto. The term of the bonds will be 17 years with a 40-year amortization, and a final maturity date of January 1, 2061.

A copy of the Exhibits recommended to be approved by the Board as referenced in Resolution No. 21-009 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.

EXHIBIT A

The Montage – Owner Organizational Chart



RESOLUTION NO. 21-009

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (THE MONTAGE APARTMENTS), SERIES 2021; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); 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 individuals 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, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (the "Bonds") pursuant to and in accordance with the terms of an Indenture of Trust (the "Indenture") between the Department and BOKF, NA, as trustee (the "Trustee"), for the purpose of providing funds in connection with the financing of the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Saddlespur Pass Apartments, LP, a Texas limited partnership (the "Borrower") in connection with the cost of the acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within

the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by a resolution adopted on June 25, 2020, declared its intent to issue its revenue bonds to provide financing for the Development; and

WHEREAS, the Borrower has requested and has received a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department, the Borrower and Red Stone Servicer, LLC, as initial Controlling Person will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the Note will be secured by a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) (the "Mortgage") from the Borrower for the benefit of the Department and assigned to the Trustee;

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Note and the Mortgage will be assigned to the Trustee pursuant to an Assignment of Deed of Trust Documents (the "Assignment of Mortgage") from the Department to the Trustee; and

WHEREAS, the Board has determined that the Department, the Trustee, Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, as fee owner (the "Fee Owner"), and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Bexar County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement") to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of Proceeds of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and RSZ TAC LLC or an entity designated by RSZ TAC LLC (the "Purchaser"), setting forth certain terms and conditions

upon which the Purchaser will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Purchaser; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Mortgage, the Assignment of Mortgage and the Note; has found 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, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

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 the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the 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 the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the initial purchaser thereof pursuant to the Bond Purchase Agreement.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. The Bonds shall bear interest at the Bond Coupon Rate, as defined in the Indenture and subject to adjustment as described in the Indenture; provided that (i) in no event shall the interest rate (including any default rate) exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Bonds shall be \$34,000,000; (iii) the final maturity of the Bonds shall be January 1, 2061; and (iv) the price at which the Bonds are sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.13 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower, the Fee Owner and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Bexar County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Purchaser is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower and the Purchaser.

Section 1.8 Acceptance of the Note and the Mortgage. That the form and substance of the Note and the Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse and to execute.

Section 1.9 Approval, Execution and Delivery of the Assignment of Mortgage. That the form and substance of the Assignment of Mortgage are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment of Mortgage, and to deliver the Assignment of Mortgage to the Trustee.

Section 1.10 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, 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 they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.11 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, and in the opinion of Bracewell LLP, Bond Counsel

to the Department ("Bond Counsel"), 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 1.12 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 B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Tax Exemption Agreement
- Exhibit F - Bond Purchase Agreement
- Exhibit G - Note
- Exhibit H - Mortgage
- Exhibit I - Assignment of Mortgage

Section 1.13 Authorized Representatives. That 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 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 Multifamily Bonds 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds to finance the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing the costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's

costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase any Bond in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, 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. Each Bond shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing 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 Section 2306.032 of the Texas Government Code, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act regarding meetings of the Governing Board.

PASSED AND APPROVED this 14th day of January, 2021.

EXHIBIT A

Description of Development

Borrower: Saddlespur Pass Apartments, LP, a Texas limited partnership

Development: The Development is a 216 unit affordable, multifamily housing development to be known as The Montage Apartments, to be located at 7554 FM 78, San Antonio, Bexar County, Texas 78244. It consists of five (5) residential apartment buildings with approximately 222,972 net rentable square feet. The unit mix will consist of:

60	one-bedroom/one-bath units
96	two-bedroom/two-bath units
60	three-bedroom/two-bath units
<hr/>	
216	Total Units

Unit sizes will range from approximately 770 square feet to approximately 1,283 square feet.

20615 The Montage - Application Summary

REAL ESTATE ANALYSIS DIVISION
January 7, 2020

PROPERTY IDENTIFICATION		RECOMMENDATION					
Application #	20615	TDHCA Program		Request			
Development	The Montage	LIHTC (4% Credit)	\$1,916,191	\$1,914,402	\$8,863/Unit	\$0.92	
City / County	San Antonio / Bexar						
Region/Area	9 / Urban						
Population	General						
Set-Aside	General						
Activity	New Construction	Private Activity Bonds	\$34,000,000	3.85%	40	17	1

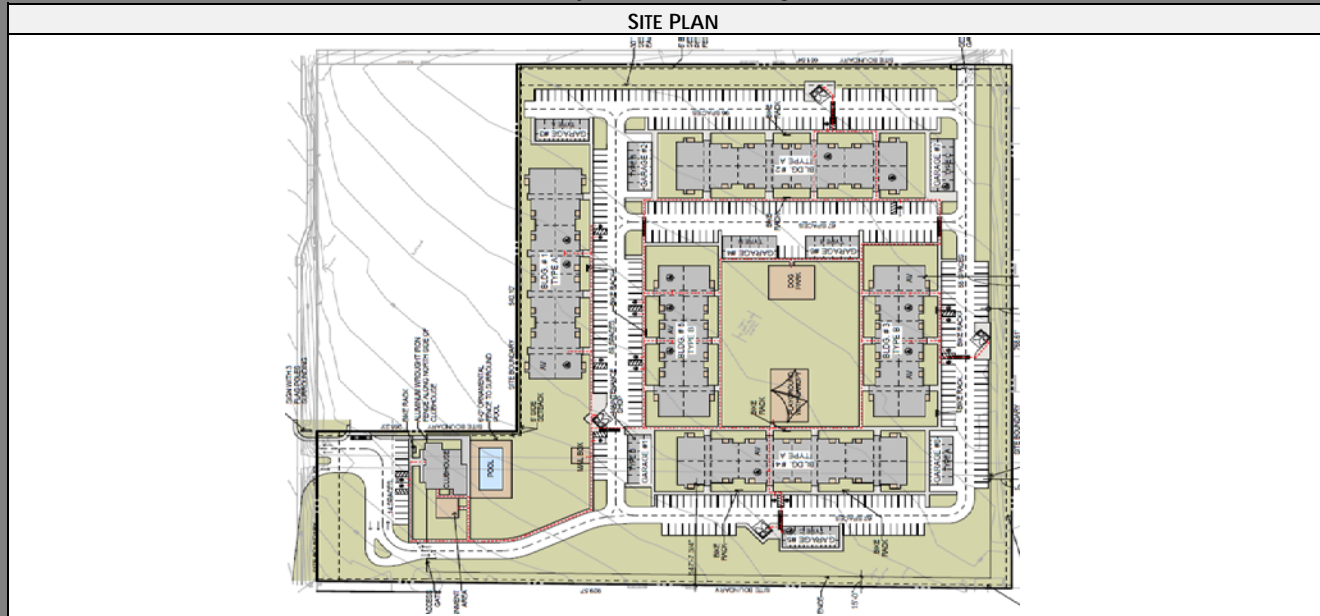
KEY PRINCIPALS / SPONSOR		
Bexar Management and Development Corp		
Herman & Kittle Erika Scott		
Sarah Andre-Consultant		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	60	28%	40%	-	0%
2	96	44%	50%	-	0%
3	60	28%	60%	216	100%
4	-	0%	MR	-	0%
TOTAL	216	100%	TOTAL	216	100%

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.22	Expense Ratio	39.1%
Breakeven Occ.	85.8%	Breakeven Rent	\$792
Average Rent	\$857	B/E Rent Margin	\$64
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$3,886/unit	Controllable	\$2,628/unit



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (0% Maximum)	9.2%
Highest Unit Capture Rate	23% 2 BR/60% 96
Dominant Unit Cap. Rate	19% 2 BR/40% 96
Premiums (↑60% Rents)	N/A N/A
Rent Assisted Units	N/A

DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,032 SF	Density	16.6/acre
Acquisition		\$15K/unit	\$3,153K
Building Cost	\$85.94/SF	\$89K/unit	\$19,162K
Hard Cost		\$109K/unit	\$23,512K
Total Cost		\$195K/unit	\$42,055K
Developer Fee	\$4,650K	(31% Deferred)	Paid Year: 4
Contractor Fee	\$3,114K	30% Boost	Yes

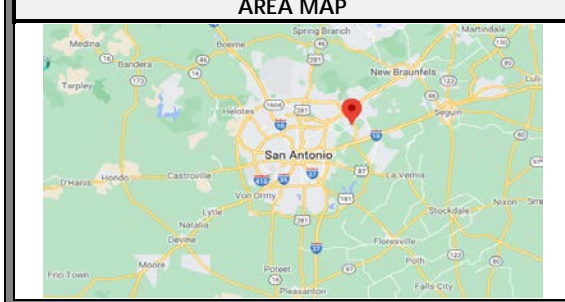
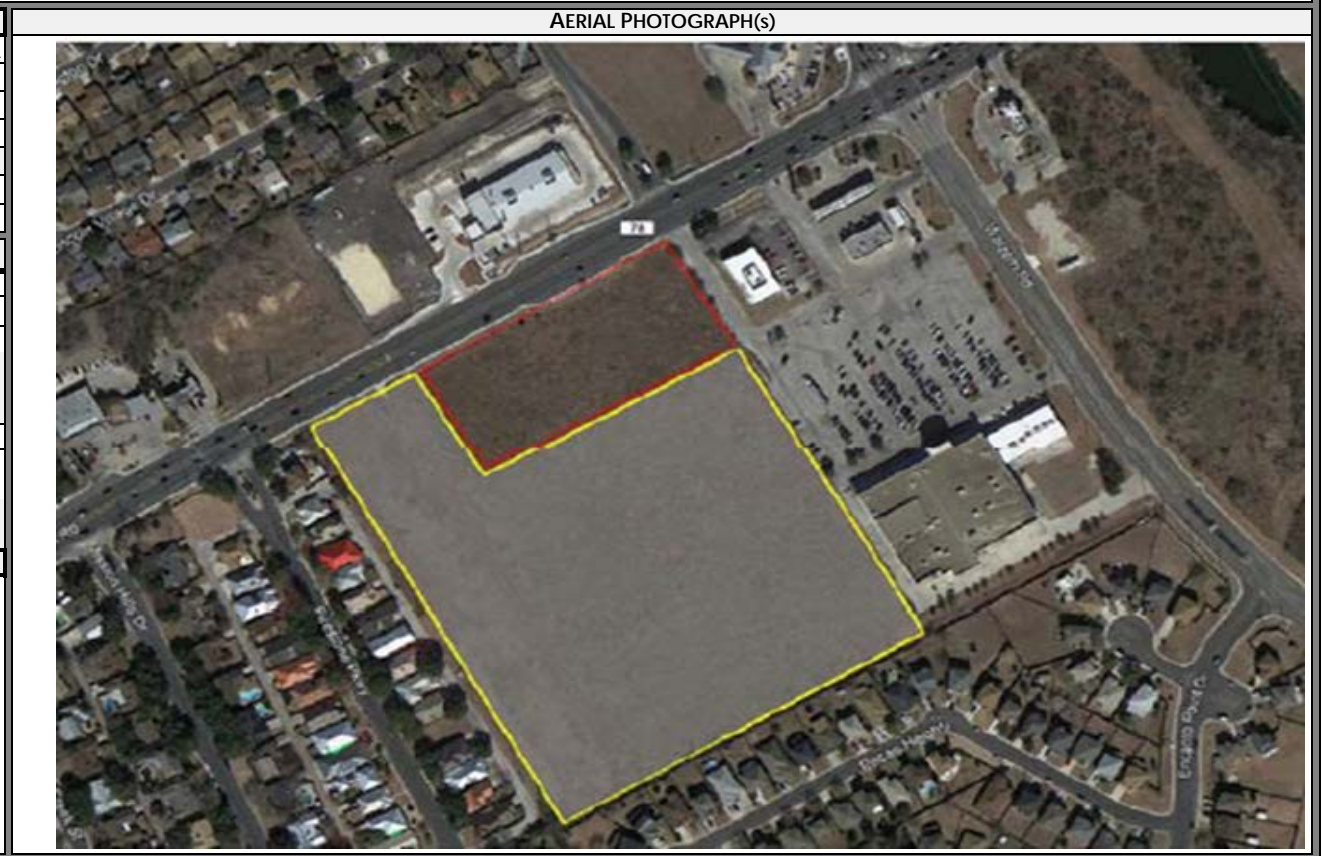
DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Redstone Construction	17/40	3.85%	\$23,000,000	1.22	GP Contribution			\$100	1.22	Enterprise	\$17,610,741
TOTAL DEBT (Must Pay)			\$23,000,000		CASH FLOW DEBT / GRANTS			\$100		TOTAL EQUITY SOURCES	\$19,054,832
										TOTAL DEBT SOURCES	\$23,000,100
										TOTAL CAPITALIZATION	\$42,054,932

CONDITIONS

- 1 Receipt and acceptance by Cost Certification:
- Executed ground lease with Bexar Management and Development Corporation clearly specifying all terms and conditions, including who will retain ownership of land and improvements at the end of the lease.

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	TDHCA
Expiration Date	3/15/2021
Bond Amount	\$35,000,000
BRB Priority	Priority 3
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	95.2%
RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
<ul style="list-style-type: none"> Low expense-to-income ratio Overall Feasibility Indicators 	
WEAKNESSES/RISKS	
<ul style="list-style-type: none"> Feasibility reliant on property tax-exempt status 	





DEVELOPMENT IDENTIFICATION

TDHCA Application #: 20615 Program(s): TDHCA Bonds/4% HTC

The Montage

Address/Location: 7554 FM 78

City: San Antonio County: Bexar Zip: 78224

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Garden (Up to 4-story) Region: 9

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
Private Activity Bonds	\$34,000,000	3.85%	40	17	\$34,000,000	3.85%	40	17	1
LIHTC (4% Credit)	\$1,916,191				\$1,914,402				

CONDITIONS

- 1 Receipt and acceptance by Cost Certification:
- Executed ground lease with Bexar Management and Development Corporation clearly specifying all terms and conditions, including who will retain ownership of land and improvements at the end of the lease.
- 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.

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	216

DEVELOPMENT SUMMARY

The Montage is a new construction project designed to serve a general population. There will be five 3-story walkup garden style buildings with 216 one, two, and three bedroom units. Outdoor amenities will include an entertainment area, a pool, a playground, and a dog park. Clubhouse amenities include a fitness center, a library, a community room with a kitchen, and a business center. The development will also include 8 garage buildings with a total of 47 garages and 72 storage units available for rent to tenants. The cost of these garages/storage buildings will not be included in eligible basis.

RISK PROFILE

STRENGTHS/MITIGATING FACTORS		WEAKNESSES/RISKS	
<input type="checkbox"/>	Low expense-to-income ratio	<input type="checkbox"/>	Feasibility reliant on property tax-exempt status
<input type="checkbox"/>	Overall Feasibility Indicators	<input type="checkbox"/>	

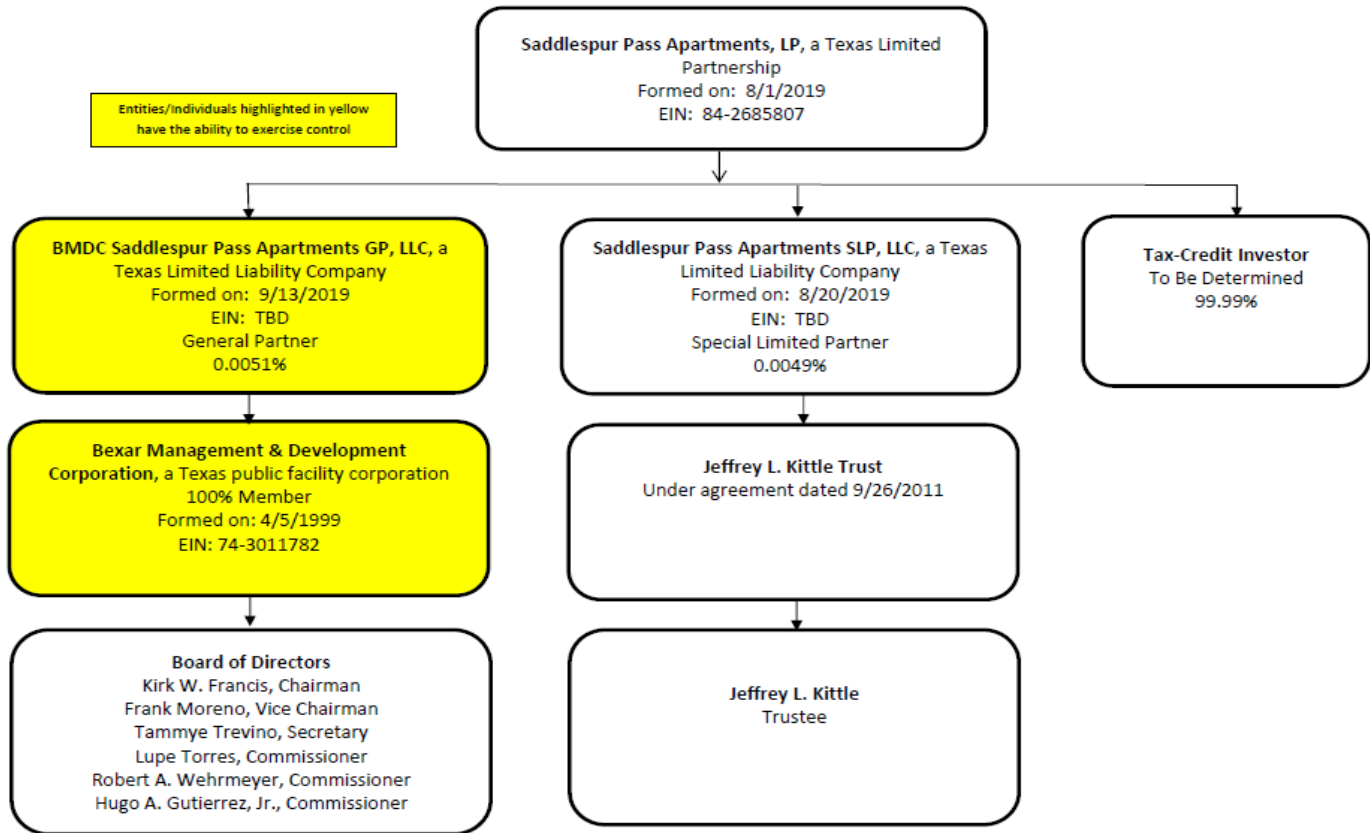
DEVELOPMENT TEAM

PRIMARY CONTACTS

Name: Erika Scott
 Phone: (317) 663-6824
 Relationship: Developer

Name: Carly Gast
 Phone: (641) 832-9088
 Relationship: Developer

OWNERSHIP STRUCTURE

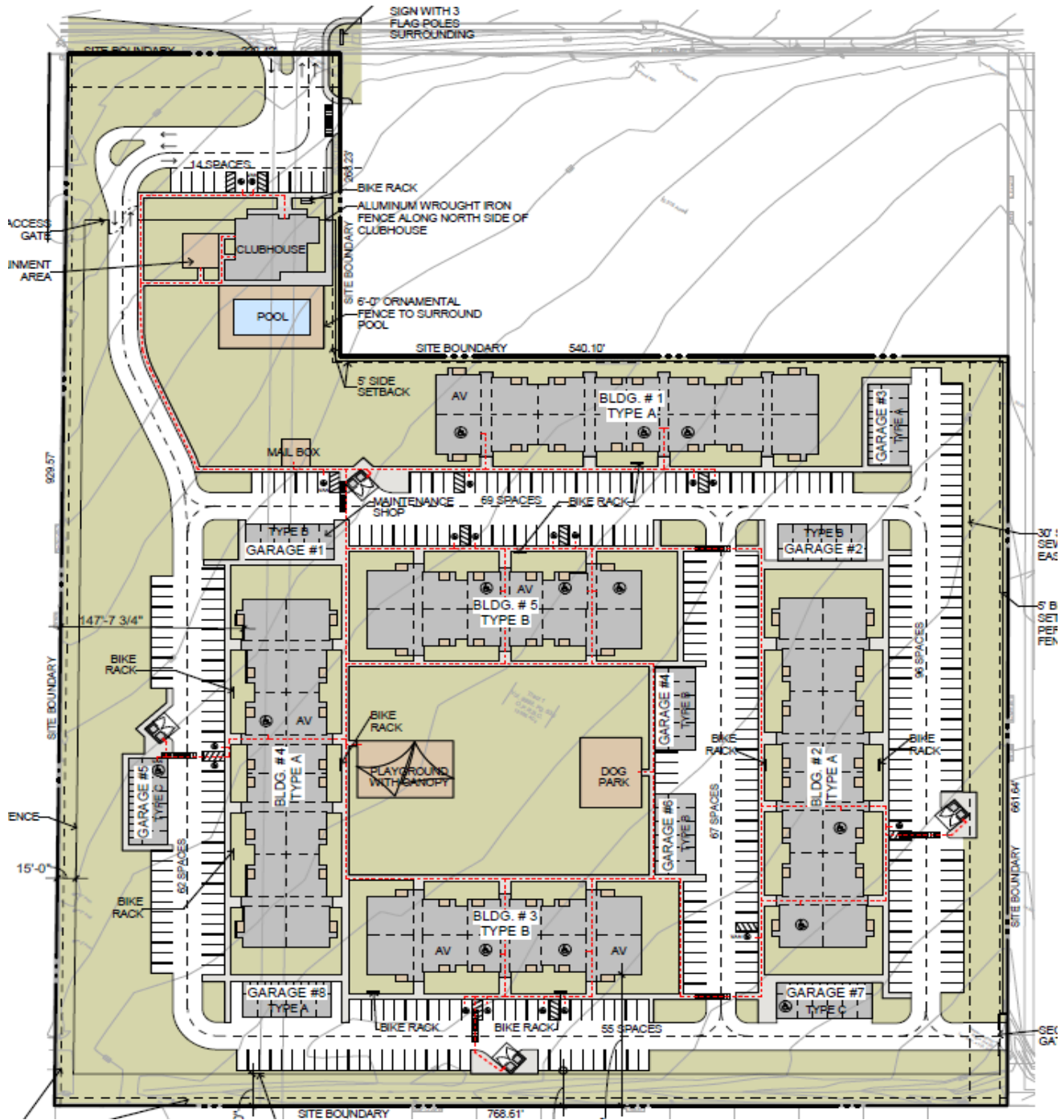


- Applicant, developer, contractor, architect, attorney, and property manager are related entities.
- Herman & Kittle Properties has participated in the development, construction, and management of over 155 multi-family properties in the Midwest and South, including 12 LIHTC properties in Texas since 2011.
<https://www.hermankittle.com>

DEVELOPMENT SUMMARY

SITE PLAN

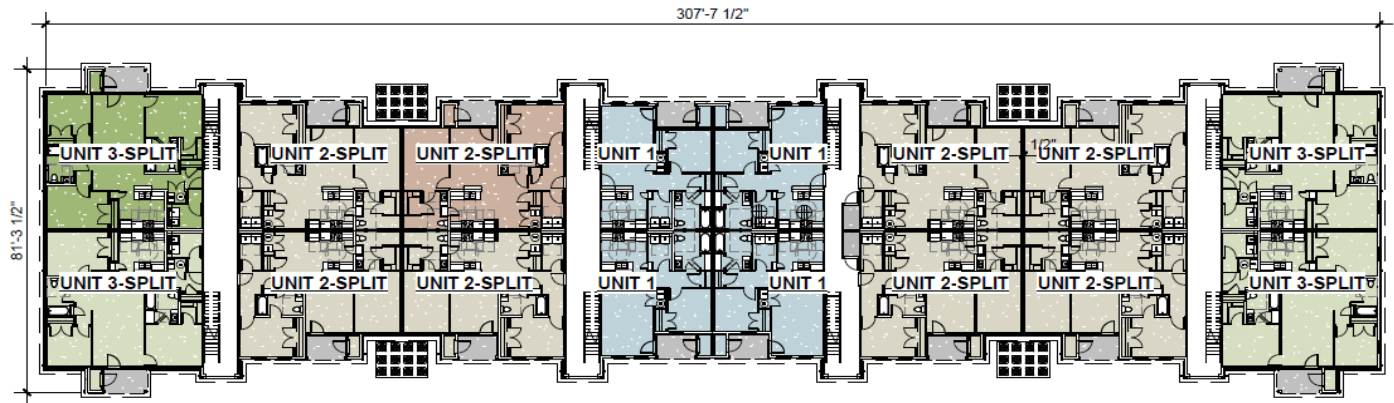




Comments:

The majority of the site is covered by native grasses and is relatively flat. The property is located within the Martinez Creek watershed. The property drains across the property from northwest to southeast at a slope of approximately 3%. There is an existing 20' ft wide drainage easement located within the property adjacent to the southern property boundary. The eastern adjacent property also has an existing drainage easement which allows the development to discharge flows through the property and eventually discharge into the existing storm water infrastructure within Walzem Road. Site amenities include bike racks, a dog park, swimming pool, playground and clubhouse.

BUILDING PLAN (Typical)



Comments:

There are 1-bedroom/1-bath units, 2-bedroom/2-bath units, and 3-bedroom/2-bath units. All bathrooms have single vanities. Plumbing runs center.

Parking	No Fee		Tenant-Paid		Total	
	Count	Cost/unit	Count	Cost/unit	Count	Cost/unit
Open Surface	363	1.7/unit	0	--	363	1.7/unit
Carport	0	--	0	--	0	--
Garage	0	--	48	0.2/unit	48	0.2/unit
Total Parking	363	1.7/unit	48	0.2/unit	411	1.9/unit

Comments:

The proposed site plan includes eight (8) garage buildings, totaling 48 garage bays and 72 storage units. There are 385 proposed surface parking spaces, which includes 15 ADA spaces and 3 van ADA spaces. The site is located in the City of San Antonio ETJ and Bexar County, there is no required number of parking spaces for the proposed development. However, if the developer chooses to follow the City of San Antonio parking requirements based on use IF the property was located within the City Limits, 1.5 spaces per unit is required if located in a residential district or 1 space per unit is required if located in a non-residential district. Currently, the proposed site plan appears to adhere to the jurisdictional design criteria and ordinances.

BUILDING ELEVATION



Comments:

The development consists of a 3-story walk-up garden style building with standard articulation. Units have 8-ft ceilings and 5/12 roof pitches. Exterior cladding is 7% stone veneer, 26% brick veneer and 67% siding.

BUILDING CONFIGURATION

Building Type	1	2	3	4	5										Total Buildings
Floors/Stories	3	3	3	3	3										
Number of Bldgs	1	1	1	1	1										5
Units per Bldg	48	48	36	48	36										
Total Units	48	48	36	48	36										216
Avg. Unit Size (SF)	1,032 sf		Total NRA (SF)		222,972		Common Area (SF)*		3,353						

*Common Area Square Footage as specified on Architect Certification

SITE CONTROL INFO

Site Acreage: Development Site: 12.995 acres Density: 16.6 units/acre
Site Control: 13 +/- **Site Plan:** 12.995 **Appraisal:** na **ESA:** 12.995

Control Type: Purchase Contract Contract Expiration: 1/29/2021

Development Site: 12.995 acres Cost: \$3,114,540 \$14,419 per unit

Seller: FM 78-16 JV

Buyer: Herman & Kittle Properties, Inc.

Assignee: Saddlespur Pass Apartments, L.P.

Related-Party Seller/Identity of Interest: No

Comments:

There will be a 75 year ground lease between Bexar Management and Development Corporation (Landlord) and Saddlespur Pass Apartments, LP (Tenant) executed upon closing.

SITE INFORMATION

Flood Zone:	<u>Zone X</u>	Scattered Site?	<u>No</u>
Zoning:	<u>In ETJ, no zoning required</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>0</u>	Title Issues?	<u>No</u>

Current Uses of Subject Site:

The Site currently consists of 12.995 acres of vacant, undeveloped land.

Surrounding Uses:

Northeast: retail shopping center
 Southwest: single family residences

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Progea, Inc. Date: 4/29/2020

Recognized Environmental Conditions (RECs) and Other Concerns:

- The assessment has revealed no evidence of recognized environmental conditions (RECs), as defined by ASTM, in connection with the subject property.

MARKET ANALYSIS

Provider: Apartment MarketData, LLC

Date: 4/27/2020

Primary Market Area (PMA): 26 sq. miles 3 mile equivalent radius

ELIGIBLE HOUSEHOLDS BY INCOME								
Bexar County Income Limits								
HH Size		1	2	3	4	5	6	7+
60% AMGI	Min	\$24,300	\$24,300	\$29,160	\$29,160	\$33,690	\$33,690	---
	Max	\$30,240	\$34,560	\$38,880	\$43,200	\$46,680	\$50,160	---

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
20604	The Walzem	Yes	New	General	194	200
Other Affordable Developments in PMA since 2015						
20489	Horizon Pointe		New	General	n/a	312
Stabilized Affordable Developments in PMA					Total Units	1,470
					Total Developments	7
					Average Occupancy	98%

Proposed, Under Construction, and Unstabilized Competitive Supply:

The Walzem (#20604) is located just down the street from the Subject and has 194 competitive units.

Kitty Hawk Flats (#20411, 112 comp units) and 1604 Lofts (#20412, 199 comp units) are 2020 approved bond projects outside the PMA. Their PMA's overlap census tracts with Subject PMA, and therefore are drawing from the same qualified demand. Market Analyst did not include these units in their calculations.

Horizon Pointe (#20489) is inside the PMA, but does not have any 60% units to compete with Subject.

OVERALL DEMAND ANALYSIS			
	Market Analyst		
	HTC		
Total Households in the Primary Market Area	35,410		
Potential Demand from the Primary Market Area	4,032		
10% External Demand	403		
Potential Demand from Other Sources			
GROSS DEMAND	4,435		
Subject Affordable Units	216		
Unstabilized Competitive Units	194		
RELEVANT SUPPLY	410		
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE	9.2%		

Population:	General	Market Area:	Urban	Maximum Gross Capture Rate:	15%
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND					
AMGI Band	Market Analyst				
	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate
60% AMGI	4,032	403	216	194	9%

Demand Analysis:

If we included the 311 competitive units that are located outside the Subject PMA, but share some census tracts, the GCR would be 16%. This is a worst case scenario as it includes the outside supply, but none of the additional demand from Kitty Hawk's or 1604 Loft's PMA's. The PMA is in a large MSA and would qualify for a 15% maximum allowable GCR.

Because the competitive units are located outside the Market Analyst's determined PMA, and Underwriter's worst case scenario test produced a GCR that would be below the 15% GCR if we included 370 units of demand from the other two PMA's, Market Analyst's capture rates are used for analysis.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE					
Unit Type	Market Analyst				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/60%	488	49	60	58	22%
2 BR/60%	763	76	96	97	23%
3 BR/60%	719	72	60	39	13%

Market Analyst Comments:

Montabella Pointe (TDHCA # 09198) is the most recent affordable project built within the PMA and has 144 units. Montabella Pointe was built in 2011 and is currently 100% occupied. (p.12)

Subject's affordable tax credit rents on a Total Rent Basis are between 26% and 36% below market rents currently offered in the marketplace. (p. 15)

From our survey of the market, we find that 52.4% of the rental housing stock to have been built prior to 1990...Since the 2010 census, there have been two major projects built and occupied within the PMA totaling 465 units...The current supply of affordable housing in this market is far less than demand. The current stock of affordable housing in the primary market area consists of seven family projects and one senior project. (p. 58-60)

Revisions to Market Study:	0
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OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)

NOI:	\$1,398,846	Avg. Rent:	\$857	Expense Ratio:	39.1%
Debt Service:	\$1,150,897	B/E Rent:	\$792	Controllable Expenses:	\$2,628
Net Cash Flow:	\$247,949	UW Occupancy:	92.5%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.22	B/E Occupancy:	85.8%	Program Rent Year:	2020

All restricted units underwritten at maximum HTC Program Rents.

Property is tax-exempt. Without the tax-exemption, DCR would fall to 0.96, below financial feasibility threshold.

The Lender signed a long-term pro forma that includes \$3,000 annual expense for Supportive Services.

Pursuant to §11.302(d)(2)(K), the estimated expenses underwritten at Application will be included in the DCR calculation at Cost Cert regardless if actually incurred.

The break-even vacancy is 30 units; underwritten with 16 vacant units. The average rent is \$64 above break-even.

Income, expenses and NOI are all within 5%, so feasibility analysis is based on the Applicant's pro forma. 15-year cumulative cash flow is \$4.1M.

Required debt service on the permanent debt will be interest-only for the first five years. Based on the reduced payment, the first-year Debt Coverage Ratio is 1.44 times. For credit-sizing purposes debt coverage is calculated using the projected NOI from year 6 when the loan fully amortizes, indicating a 1.22 Debt Coverage Ratio.

The long-term operating pro forma reflects cash flow based on the reduced debt service for the first five years.

Related-Party Property Management Company: Yes

Revisions to Rent Schedule:	0
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Revisions to Annual Operating Expenses:	0
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DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)

Acquisition	\$242,658/ac	\$14,599/unit	\$3,153,342	Contractor Fee	\$3,114,238
Off-site + Site Work		\$14,269/unit	\$3,082,204	Soft Cost + Financing	\$6,977,865
Building Cost	\$85.94/sf	\$88,715/unit	\$19,162,356	Developer Fee	\$4,650,000
Contingency	5.70%	\$5,870/unit	\$1,267,940	Reserves	\$646,987
Total Development Cost	\$194,699/unit		\$42,054,932	Rehabilitation Cost	N/A
Qualified for 30% Basis Boost?		Located in a Small Area Difficult Development Area (SADDA)			

Site Work:

Certified estimate of \$2.6M (\$12.6K/unit) is for demolition, grading, paving, and utilities. Site amenities of \$439K include \$192K for landscaping with remainder for the fencing, pool and deck.

Building Cost:

The development consists of a 3-story walk-up garden style building. Units have 8-ft ceilings, vinyl railings and 5/12 roof pitches. Exterior cladding is 7% stone veneer, 26% brick veneer and 67% siding. There are masonry veneer detached garages and rentable storage units. The garages and storage are charged to tenants, which will be excluded from eligible basis.

Applicant's building cost is estimated at \$85.94/square foot. Underwriter estimates building costs to be \$85.69/square foot based upon Marshall and Swift's "Good" base cost adjusted based upon market conditions. In general, costs may be higher than TDHCA standards due to market conditions. HKP has found that demand for construction is high, while the number of sub contractors available are limited. Between high demand, lumber price increases nationwide and a shortage of labor due to the pandemic, construction costs are running higher than are customary for TDHCA.

Ineligible Costs:

The cost for garage parking amenities, 60 small storage units and 18 large storage units, which are located behind the garages have been excluded from eligible basis.

Financing Cost:

REA Rules allow two years of interest on construction period debt to be included in eligible basis. The Applicant overstated this amount by \$34,399.

Reserves:

Reserves of \$646K include 5 months of operating expenses and debit service.

Comments:

The total development cost varies by less than 1%. The recommended financing structure will be based on the Applicant's cost schedule.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$42,054,932	\$36,815,430	\$1,914,402

Related-Party Contractor: Yes

Related-Party Cost Estimator: Yes

Revisions to Development Cost Schedule:	1
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UNDERWRITTEN CAPITALIZATION

BOND RESERVATION			
Issuer	Amount	Reservation Date	Priority
TDHCA	\$35,000,000	9/16/2020	Priority 3
Closing Deadline		Bond Structure	
3/15/2021		Private Placement	

Percent of Cost Financed by Tax-Exempt Bonds	95.2%
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Comments:

TDHCA has a reservation of \$35,000,000, but will issue \$34,000,000 in tax exempt bonds to be used for construction financing.

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
Redstone Construction	Bridge Loan	\$34,000,000	3.85%	87%
Enterprise	HTC	\$3,525,439	\$0.92	9%
Deferred Developer Fee	Deferred Fee	\$1,427,637		4%
GP Contribution	Contribution	\$100		0%
		\$38,953,176	Total Sources	

Comments:

Redstone will purchase up to \$34,000,000 in tax-exempt revenue bonds issued by TDHCA to facilitate the construction of The Montage.

PERMANENT SOURCES									
Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Redstone Construction	\$23,000,000	3.85%	40	17	\$23,000,000	3.85%	40	17	55%
GP Contribution	\$100				\$100				0%
Total	\$23,000,100				\$23,000,100				

Comments:

The current term sheet from Redstone indicates \$23M of permanent debt. As of the date of posting, it's anticipated that \$12M of the bond debt will be redeemed at conversion leaving \$22M of permanent debt. In that case the DCR will be 1.27.

The payment requirement on the permanent debt is interest only for five years after conversion. The term sheet indicates a maximum permanent debt amount of up to \$25M if NOI increases at Stabilization. As currently underwritten, with \$25M permanent debt the DCR would be 1.12 and the development would be infeasible.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Enterprise	\$17,627,195	\$0.92		\$17,610,741	\$0.92	42%	
Deferred Developer Fee	\$1,427,637		31%	\$1,444,091		3%	31%
Total	\$19,054,832			\$19,054,832			
				\$42,054,932	Total Sources		

Credit Price Sensivity based on current capital structure

\$0.994	Maximum Credit Price before the Development is oversourced and allocation is limited
\$0.752	Minimum Credit Price below which the Development would be characterized as infeasible

Revisions to Sources Schedule: 1

CONCLUSIONS

Recommended Financing Structure:

Gap Analysis:	
Total Development Cost	\$42,054,932
Permanent Sources (debt + non-HTC equity)	\$23,000,100
Gap in Permanent Financing	\$19,054,832

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$17,610,741	\$1,914,402
Needed to Balance Sources & Uses	\$19,054,832	\$2,071,384
Requested by Applicant	\$17,627,195	\$1,916,191

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$17,610,741	\$1,914,402

	Amount	Interest Rate	Amort	Term	Lien
TDHCA-Issued Bonds	\$34,000,000	3.85%	40	17	1

Deferred Developer Fee	\$1,444,091	(31% deferred)
Repayable in	4 years	

Comments:

Underwriter recommends a tax credit allocation of \$1,914,402 per year as determined by eligible basis. The Applicant's credit request was revised to reflect the 4.00% applicable percentage set by federal legislation passed at the end of 2020.

Underwriter: Deborah Willson
 Manager of Real Estate Analysis: Thomas Cavanagh
 Director of Real Estate Analysis: Brent Stewart

UNIT MIX/RENT SCHEDULE

The Montage, San Antonio, TDHCA Bonds/4% HTC #20615

LOCATION DATA	
CITY:	San Antonio
COUNTY:	Bexar
Area Median Income	\$72,000
PROGRAM REGION:	9
PROGRAM RENT YEAR:	2020

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	60	27.8%	0	0
2	96	44.4%	0	0
3	60	27.8%	0	0
4	-	0.0%	0	0
5	-	0.0%	0	0
TOTAL	216	100.0%	-	-

60%	Average Income	
Income	# Units	% Total
20%	-	0.0%
30%	-	0.0%
40%	-	0.0%
50%	-	0.0%
60%	216	100.0%
70%	-	0.0%
80%	-	0.0%
MR	-	0.0%
TOTAL	216	100.0%

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	1,032 sf

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 60%	\$810	60	1	1	770	\$810	\$88	\$722	\$0	\$0.94	\$722	\$43,320	\$43,320	\$722	\$0.94	\$0	\$1,063	\$1.38	\$1,063
TC 60%	\$972	24	2	2	956	\$972	\$112	\$860	\$0	\$0.90	\$860	\$20,640	\$20,640	\$860	\$0.90	\$0	\$1,169	\$1.22	\$1,169
TC 60%	\$972	72	2	2	1,105	\$972	\$112	\$860	\$0	\$0.78	\$860	\$61,920	\$61,920	\$860	\$0.78	\$0	\$1,352	\$1.22	\$1,352
TC 60%	\$1,123	24	3	2	1,170	\$1,123	\$137	\$986	\$0	\$0.84	\$986	\$23,664	\$23,664	\$986	\$0.84	\$0	\$1,375	\$1.18	\$1,375
TC 60%	\$1,123	36	3	2	1,283	\$1,123	\$137	\$986	\$0	\$0.77	\$986	\$35,496	\$35,496	\$986	\$0.77	\$0	\$1,536	\$1.20	\$1,536
TOTALS/AVERAGES:		216			222,972				\$0	\$0.83	\$857	\$185,040	\$185,040	\$857	\$0.83	\$0	\$1,285	\$1.24	\$1,285

ANNUAL POTENTIAL GROSS RENT:	\$2,220,480	\$2,220,480
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STABILIZED PRO FORMA

The Montage, San Antonio, TDHCA Bonds/4% HTC #20615

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	Local Comps	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT				\$0.83	\$857	\$2,220,480	\$2,220,480	\$857	\$0.83		0.0%	\$0
Garages & Storage					\$13.86	\$35,921						
Cable/Internet					\$6.45	\$16,718						
Late Fees/Pet Deposits					\$17.50	\$45,360						
Total Secondary Income					\$37.81		\$51,840	\$20.00			89.0%	\$46,159
POTENTIAL GROSS INCOME						\$2,318,479	\$2,272,320				2.0%	\$46,159
Vacancy & Collection Loss				7.5% PGI		(173,886)	(170,424)	7.5% PGI			2.0%	(3,462)
Rental Concessions						-	-				0.0%	-
EFFECTIVE GROSS INCOME						\$2,144,593	\$2,101,896				2.0%	\$42,697

General & Administrative	\$283,234	\$1,311/Unit	\$121,682	\$563	4.20%	\$0.40	\$417	\$90,160	\$90,160	\$417	\$0.40	4.29%	0.0%	-
Management	\$202,435	4.4% EGI	\$78,352	\$363	3.50%	\$0.34	\$348	\$75,061	\$73,566	\$341	\$0.33	3.50%	2.0%	1,494
Payroll & Payroll Tax	\$281,162	\$1,302/Unit	\$290,680	\$1,346	11.25%	\$1.08	\$1,117	\$241,333	\$241,333	\$1,117	\$1.08	11.48%	0.0%	-
Repairs & Maintenance	\$151,111	\$700/Unit	\$180,571	\$836	7.11%	\$0.68	\$706	\$152,400	\$129,600	\$600	\$0.58	6.17%	17.6%	22,800
Electric/Gas	\$85,392	\$395/Unit	\$31,908	\$148	1.51%	\$0.15	\$150	\$32,400	\$31,908	\$148	\$0.14	1.52%	1.5%	492
Water, Sewer, & Trash Tenant Pays: WST	\$141,671	\$656/Unit	\$115,530	\$535	2.40%	\$0.23	\$238	\$51,408	\$51,408	\$238	\$0.23	2.45%	0.0%	-
Property Insurance	\$68,009	\$0.31/sf	\$75,931	\$352	4.72%	\$0.45	\$469	\$101,304	\$111,228	\$515	\$0.50	5.29%	-8.9%	(9,924)
Property Tax (@ 0%) 2.203462	\$126,318	\$585/Unit	\$116,707	\$540	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements				\$0	3.02%	\$0.29	\$300	\$64,800	\$64,800	\$300	\$0.29	3.08%	0.0%	-
Cable TV				\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Supportive Services				\$0	0.14%	\$0.01	\$14	\$3,000	\$3,000	\$14	\$0.01	0.14%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)				\$0	0.40%	\$0.04	\$40	\$8,640	\$8,640	\$40	\$0.04	0.41%	0.0%	-
TDHCA MDL Compliance (\$34/MDL unit)				\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
TDHCA Bond Compliance Fee				\$0	0.25%	\$0.02	\$25	\$5,400	\$5,400	\$25	\$0.02	0.26%	0.0%	-
Bond Trustee Fees				\$0	0.16%	\$0.02	\$16	\$3,500	\$3,500	\$16	\$0.02	0.17%	0.0%	-
Security				\$0	0.47%	\$0.04	\$46	\$10,000	\$10,000	\$46	\$0.04	0.48%	0.0%	-
TOTAL EXPENSES					39.14%	\$3.76	\$3,886	\$ 839,406	\$824,544	\$3,817	\$3.70	39.23%	1.8%	\$ 14,862
NET OPERATING INCOME ("NOI")					60.86%	\$5.85	\$6,043	\$1,305,187	\$1,277,352	\$5,914	\$5.73	60.77%	2.2%	\$ 27,835

CONTROLLABLE EXPENSES	\$2,628/Unit	\$2,520/Unit
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS
The Montage, San Antonio, TDHCA Bonds/4% HTC #20615

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Redstone Construction	0.10%	1.50	1.53	851,000	3.85%	40	17	\$23,000,000	\$23,000,000	17	40	3.85%	\$1,150,897	1.22	54.7%
CASH FLOW DEBT / GRANTS															
GP Contribution		1.50	1.53		0.00%	0	0	\$100	\$100	0	0	0.00%		1.22	0.0%
				\$851,000	TOTAL DEBT / GRANT SOURCES			\$23,000,100	\$23,000,100	TOTAL DEBT SERVICE			\$1,150,897	1.22	54.7%
NET CASH FLOW		\$426,352	\$454,187					APPLICANT NET OPERATING INCOME		\$1,398,846	\$247,949	NET CASH FLOW			

EQUITY SOURCES											
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE					
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
Deferred Developer Fee	Deferred Developer Fees	3.4%	(31% Deferred)		\$1,427,637	\$1,444,091	(31% Deferred)		3.4%		Total Developer Fee: \$4,650,000
Additional (Excess) Funds Req'd		0.0%				\$0			0.0%		
TOTAL EQUITY SOURCES		45.3%			\$19,054,832	\$19,054,832			45.3%		
TOTAL CAPITALIZATION						\$42,054,932	\$42,054,932			15-Yr Cash Flow after Deferred Fee:	\$4,106,048

DEVELOPMENT COST / ITEMIZED BASIS													
APPLICANT COST / BASIS ITEMS						TDHCA COST / BASIS ITEMS						COST VARIANCE	
Acquisition	Eligible Basis		Total Costs	Total Costs	Eligible Basis		%	\$					
	New Const. Rehab				New Const. Rehab	Acquisition							
Land Acquisition			\$14,599 / Unit	\$3,153,342	\$3,153,342	\$14,599 / Unit		0.0%	\$0				
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$ / Unit	\$0	0.0%	\$0				
Off-Sites			\$ / Unit	\$0	\$0	\$ / Unit		0.0%	\$0				
Site Work		\$2,623,029	\$12,234 / Unit	\$2,642,529	\$2,642,529	\$12,234 / Unit	\$2,623,029	0.0%	\$0				
Site Amenities		\$439,675	\$2,036 / Unit	\$439,675	\$439,675	\$2,036 / Unit	\$439,675	0.0%	\$0				
Building Cost		\$18,871,856	\$85.94 /sf	\$88,715/Unit	\$19,162,356	\$19,107,584	\$88,461/Unit	\$85.69 /sf	\$18,349,188	0.3%	\$54,772		
Contingency		\$1,267,940	5.78%	5.70%	\$1,267,940	\$1,267,940	5.71%	5.92%	\$1,267,940	0.0%	\$0		
Contractor Fees		\$3,114,238	13.42%	13.25%	\$3,114,238	\$3,114,238	13.28%	13.73%	\$3,114,238	0.0%	\$0		
Soft Costs	0	\$2,857,525	\$13,535 / Unit	\$2,923,525	\$2,923,525	\$13,535 / Unit	\$2,857,525		\$0	0.0%	\$0		
Financing	0	\$3,025,566	\$18,770 / Unit	\$4,054,340	\$4,054,340	\$18,770 / Unit	\$2,991,167		\$0	0.0%	\$0		
Developer Fee	\$0	\$4,650,000	14.44%	14.30%	\$4,650,000	\$4,650,000	14.34%	14.70%	\$4,650,000	0.0%	\$0		
Reserves			5 Months	\$646,987	\$646,987	4 Months				0.0%	\$0		
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)				\$194,699 / Unit	\$42,054,932	\$42,000,160	\$194,445 / Unit		\$36,292,762	\$0	0.1%	\$54,772	
Acquisition Cost	\$0				\$0								
Contingency		\$0			\$0								
Contractor's Fee		\$0			\$0								
Financing Cost		(\$34,399)											
Developer Fee	\$0	\$0			\$0								
Reserves					\$0								
ADJUSTED BASIS / COST				\$194,699/unit	\$42,054,932	\$42,000,160	\$194,445/unit		\$36,292,762	\$0	0.1%	\$54,772	
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):						\$42,054,932							

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS
The Montage, San Antonio, TDHCA Bonds/4% HTC #20615

	CREDIT CALCULATION ON QUALIFIED BASIS			
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$36,815,430	\$0	\$36,292,762
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$36,815,430	\$0	\$36,292,762
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$47,860,059	\$0	\$47,180,591
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	\$0	\$47,860,059	\$0	\$47,180,591
Applicable Percentage	4.00%	4.00%	4.00%	4.0000%
ANNUAL CREDIT ON BASIS	\$0	\$1,914,402	\$0	\$1,887,224
CREDITS ON QUALIFIED BASIS		\$1,914,402		\$1,887,224

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9199	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$1,914,402	\$17,610,741	\$1,914,402	(\$1,789)	(\$16,454)
Needed to Fill Gap	\$2,071,384	\$19,054,832	----	----	----
Applicant Request	\$1,916,191	\$17,627,195	----	----	----

50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$34,000,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	Applicant	TDHCA			
Land Cost	\$3,153,342	\$3,153,342		95.2%	95.5%
Depreciable Bldg Cost	\$32,556,329	\$32,467,157			
Aggregate Basis for 50% Test	\$35,709,671	\$35,620,499	amount aggregate basis can increase before 50% test fails	90.4%	90.9%

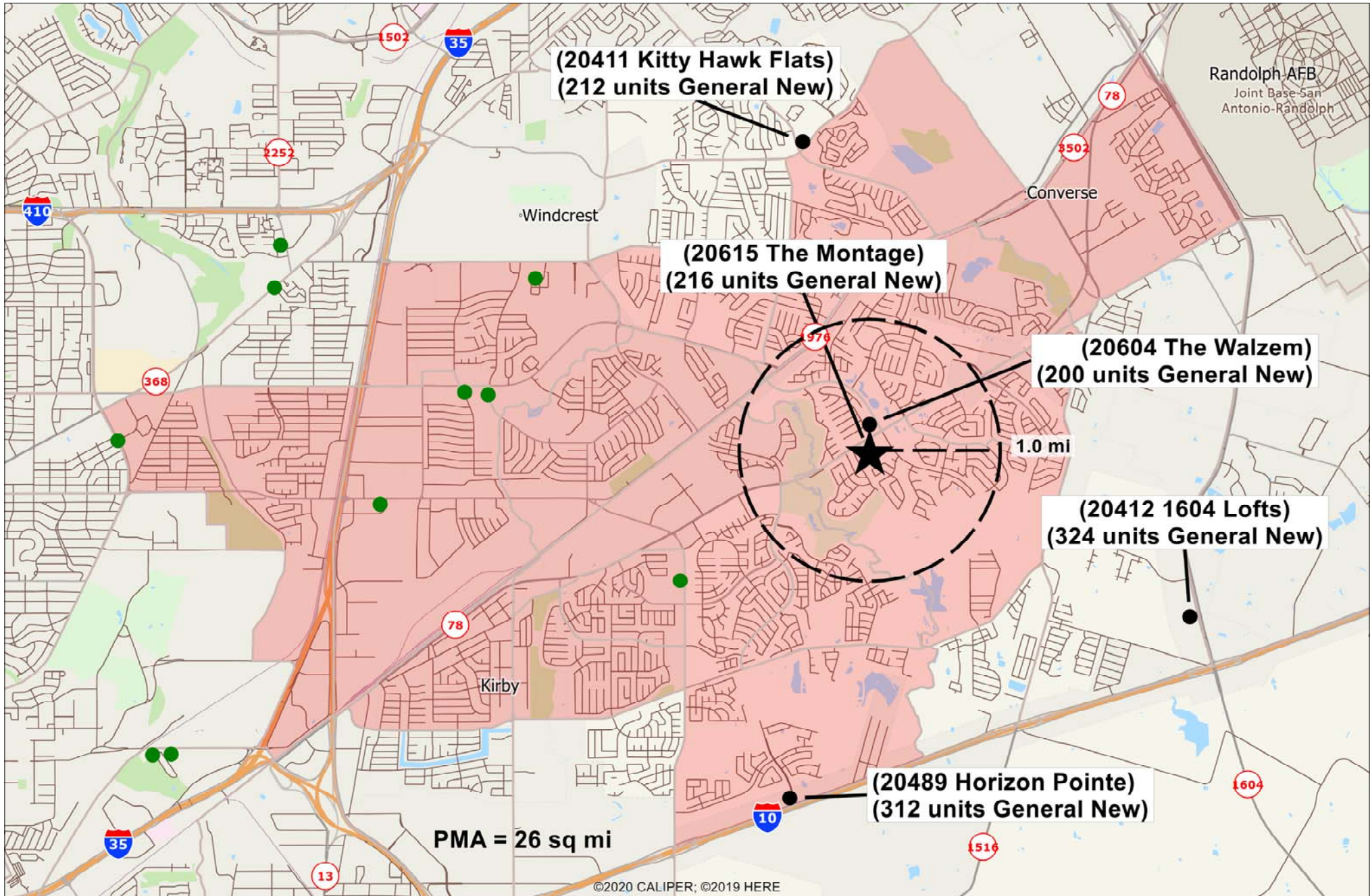
BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Garden (Up to 4-story)	222,972 SF	\$90.23	20,118,618
Adjustments				
Exterior Wall Finish	2.64%		2.38	\$531,132
Elderly	0.00%		0.00	0
9-Ft. Ceilings	0.00%		0.00	0
Roof Adjustment(s)			0.00	0
Subfloor			(0.16)	(35,676)
Floor Cover			2.56	570,808
Breezeways	\$30.04	22,924	3.09	688,558
Balconies	\$30.16	13,816	1.87	416,729
Plumbing Fixtures	\$1.080	468	2.27	505,440
Rough-ins	\$530	432	1.03	228,960
Built-In Appliances	\$1,830	216	1.77	395,280
Exterior Stairs	\$2,460	72	0.79	177,120
Heating/Cooling			2.34	521,754
Storage Space	\$30.04	1,806	0.24	54,246
Carports	\$12.25	0	0.00	0
Garages	\$56.50	11,520	2.92	650,880
Common/Support Area	\$90.60	3,353	1.36	303,781
Elevators		0	0.00	0
Other:			0.00	0
Fire Sprinklers	\$2.59	251,055	2.92	650,232
SUBTOTAL			115.61	25,777,863
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	0.87		(15.03)	(3,351,122)
Reserved				0
TOTAL BUILDING COSTS			100.58	\$22,426,741
Plans, specs, survey, bldg permits	3.30%		(3.32)	(\$740,082)
Contractor's OH & Profit	11.50%		(11.57)	(2,579,075)
NET BUILDING COSTS		\$88,461/unit	\$85.69/sf	\$19,107,584

Long-Term Pro Forma

The Montage, San Antonio, TDHCA Bonds/4% HTC #20615

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$2,144,593	\$2,187,485	\$2,231,235	\$2,275,859	\$2,321,377	\$2,562,987	\$2,829,745	\$3,124,267	\$3,449,443	\$3,808,464	\$4,204,852	\$4,642,497
TOTAL EXPENSES	3.00%	\$839,406	\$863,837	\$888,987	\$914,875	\$941,525	\$1,087,001	\$1,255,181	\$1,449,633	\$1,674,486	\$1,934,525	\$2,235,288	\$2,583,188
NET OPERATING INCOME ("NOI")		\$1,305,187	\$1,323,648	\$1,342,248	\$1,360,984	\$1,379,851	\$1,475,986	\$1,574,564	\$1,674,634	\$1,774,957	\$1,873,939	\$1,969,565	\$2,059,308
EXPENSE/INCOME RATIO		39.1%	39.5%	39.8%	40.2%	40.6%	42.4%	44.4%	46.4%	48.5%	50.8%	53.2%	55.6%
MUST -PAY DEBT SERVICE													
Redstone Construction		\$908,500	\$908,500	\$908,500	\$908,500	\$908,500	\$1,148,294	\$1,146,409	\$1,144,123	\$1,141,354	\$1,137,998	\$1,133,931	\$1,129,001
TOTAL DEBT SERVICE		\$908,500	\$908,500	\$908,500	\$908,500	\$908,500	\$1,148,294	\$1,146,409	\$1,144,123	\$1,141,354	\$1,137,998	\$1,133,931	\$1,129,001
DEBT COVERAGE RATIO		1.44	1.46	1.48	1.50	1.52	1.29	1.37	1.46	1.56	1.65	1.74	1.82
ANNUAL CASH FLOW		\$396,687	\$415,148	\$433,748	\$452,484	\$471,351	\$327,692	\$428,155	\$530,511	\$633,603	\$735,941	\$835,634	\$930,307
Deferred Developer Fee Balance		\$1,047,404	\$632,256	\$198,508	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$253,976	\$725,327	\$2,167,150	\$4,106,048	\$6,553,343	\$9,515,150	\$12,990,827	\$16,971,106	\$21,435,847

20615 The Montage PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.



Final Transcript

**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS:
Multi Family Bond Hearing**

December 8, 2020/6:00 p.m. CST

SPEAKERS

Teresa Morales

PRESENTATION

Moderator Ladies and gentlemen, thank you for standing by. Welcome to the Multi Family Bond Hearing for Montage Apartments. At this time, all participants are in a listen-only mode. Later, there will be an opportunity for public comment. [Operator instructions]. As a reminder, this conference is being recorded.

I would now like to turn the conference over to our host, Teresa Morales.

Please go ahead.

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS

**Host: Michael Jovicevic
December 8, 2020/6:00 p.m. CST
Page 2**

Teresa

Good evening. My name is Teresa Morales, and I am with the Texas Department of Housing & Community Affairs. The purpose of this phone call is to conduct a public hearing for the proposed The Montage Apartments, to give folks on the line an idea as far as how the hearing is going to proceed. There is a brief speech that I am required to read for purposes of meeting the Internal Revenue Code, and then it'll be at the conclusion of that speech where we will ask for public comment. If there are any individuals who wish to make public comment, that will be your opportunity to do so.

To the extent that there are questions that are raised during any comments that are made, if those comments are specific to the TDHCA process with respect to this application, I will be keeping a list of those questions. And to the extent there are any questions that are development-specific with respect to the proposed development, there are representatives of the development team that are on the call, and I would ask that they would keep a list of any of those questions. And then once we've gotten through all of the public comments, all of those individuals, who would like to make public comment, it'll be at the end of that period where we will respond to any questions that were raised.

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS

**Host: Michael Jovicevic
December 8, 2020/6:00 p.m. CST
Page 3**

So, with that being said, I'd like to go ahead and get started with the Internal Revenue Code speech. Good evening. My name is Teresa Morales, and I would like to proceed with a public hearing. Let the record show that it is 6:06 p.m., Tuesday, December 8, 2020, and we are conducting a public hearing on behalf of the Texas Department of Housing & Community Affairs, with respect to an issue of tax exempt multifamily revenue bonds for a residential rental community.

This hearing is required by the Internal Revenue Code. The sole purpose of this hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development and the proposed bond issue. No decisions regarding the development will be made at this hearing. The Department's Board is scheduled to meet to consider the transaction on January 14, 2021. In addition to providing your comments at this hearing, the public is also invited to provide comment directly to the Board at any of their meetings.

The bonds will be issued as tax exempt multifamily revenue bonds in the aggregate principal amount not to exceed \$35 million, and taxable bonds, if necessary, in an amount to be determined and issued in one or more

series by the Texas Department of Housing & Community Affairs, the issuer.

The proceeds of the bonds will be loaned to Saddlespur Pass Apartments LP, or a related person or affiliate entity thereof, to finance a portion of the cost of acquiring, constructing, and equipping a multifamily rental housing community described as follows: A 216-unit multifamily residential rental development to be located on approximately 12.995 acres of land, located at the southwest corner of FM 78 and Walzem Road, San Antonio, Bexar County, Texas 78244. The proposed multifamily rental housing community will be initially owned and operated by the borrower, or a related person or affiliate thereof.

I would now like to open the floor up for public comment. If there are any individuals on the line who would like to express public comment with respect to this proposed development, this will be your opportunity to do so. You should be receiving instructions from our operator on how to unmute your line.

Moderator

[Operator instructions]. We have no public comments at this time.

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS

**Host: Michael Jovicevic
December 8, 2020/6:00 p.m. CST**

Page 5

Teresa Okay. Let the record show that there are no attendees who wish to make public comment, and therefore, the meeting is now adjourned. The time is 6:09 p.m. Thank you.

Moderator That does conclude our conference for today. Thank you for your participation, and for using AT&T Event Conferencing. You may now disconnect.

Applicant Response to Public Comment



Bexar County Commissioner Tommy Calvert
W. Nueva, Suite 1029
San Antonio, TX 78205

Via Email: tc@bexar.org

December 2, 2020

Commissioner Calvert,

On behalf of Herman & Kittle Properties, Inc. (“HKP”), I want to thank you for your engagement in our efforts to develop a multi-family community (“The Montage”) in an unincorporated area of Bexar County in your precinct. The purpose of this letter is to follow-up on the various meetings and communications related to The Montage that we have had with you and community stakeholders since 2019.

HKP is an Indianapolis-based developer, owner and operator of multi-family housing and has been in business for more than 60 years. HKP has properties in sixteen (16) states throughout the Midwest, South, Gulf, and Mid-Atlantic Regions. HKP currently has ten (10) properties operating in Texas, with three (3) additional developments currently under construction and four (4) in various stages of feasibility and development.

The Montage will be located on an approximately thirteen (13) acre tract on the east side of Bexar County that has remained undeveloped despite attempts by the owner to attract retail businesses. The size of the tract and its location are better suited for multi-family development. As the property is outside municipal limits, it is not subject to zoning or density limitations. The property has been properly platted for the planned use.

When planning for the property began, it was designed with seven (7) buildings containing 288 units. After looking closely at the surrounding uses and having preliminary conversations with your team, HKP elected to scale back the development, even though a development of this size is permissible based upon current regulations and market demand.

As now planned, The Montage will include 216 residential units that will address the high demand for workforce housing. The Montage will be built in full compliance with all applicable Bexar County and City of San Antonio regulations. Based on feedback from the community,

HKP has made significant changes to the planned development to address the concerns that we heard.

Working with your office, we participated in three stakeholder meetings that brought together representatives from multiple neighborhoods in the general area of the apartment home community. Each of those meetings gave us valuable insight that guided our planning for The Montage. The following is a summary of the development features that address the feedback and questions from the community:

- The development is 216 residential units in 5 buildings (See Exhibit 1 – Architectural Site Plan/Landscape – Visibility Study).
- The density is calculated at 16.62 units per acre.
- The unit mix is: sixty (60) 1-bedroom; ninety-six (96) 2-bedroom; and sixty (60) 3-bedroom.
- An eight (8) foot privacy fence shall be installed and set approximately thirty (30) feet from the property line adjacent to the single-family neighbors (See Exhibit 1 – Architectural Site Plan/Landscape – Visibility Study).
- On the western property line, approximately seventeen (17) Texas Ash trees will be planted between the alley and privacy fence and approximately nineteen (19) Red Oak, Shumard trees will be planted in between the Texas Ash trees and the drive lanes, surface parking areas, and single-story garage buildings to provide additional buffer from the neighboring single-family homes (See Exhibit 1 – Architectural Site Plan/Landscape – Visibility Study).
- On the southern property line, landscape islands will be added to the parking areas so that trees may be planted to provide additional buffer (See Exhibit 1 – Architectural Site Plan/Landscape – Visibility Study).
- The closest multi-family building is over 90 feet from the property line adjacent to the single-family neighbors (See Exhibit 2 – Visibility Study)
- The security will include:
 - On-site management and maintenance staff employed by HKP;
 - Controlled access entry gate;
 - Full perimeter fencing of the entire property;
 - A variety of lighting control measures including breezeway lighting, building wall packs, and site lighting throughout the property; and
 - Common area security cameras.
- Property Amenities will include:
 - Clubhouse;
 - Business center w/ desktop computers, printer, and internet access;
 - Notary;
 - Fitness center;
 - Community room;
 - Pool;
 - Outdoor entertainment area;

- Dog park;
- Playground;
- Bike racks; and
- Monthly resident activities.
- A right turn deceleration area, known as a TxDOT Urban Non-Residential Driveway, will be installed leading into the property per traffic study recommendations and TxDOT requirements.

As we continue development, we would like to maintain our engagement with you and the community, both during construction and post-construction. HKP is committed to a healthy and open relationship with our neighbors and all local officials. We appreciate your role in facilitating this relationship.

Sincerely,



Jeffrey L. Kittle
President & CEO

CC: Governor Greg Abbott, State of Texas
State Senator Eddie Lucio, Jr., Chair, Intergovernmental Relations Committee
State Representative Angie Chen Button, Chair, Urban Affairs Committee
State Senator, Pete Flores, District 19
State Representative Barbara Gervin-Hawkins, District 120
Teresa Morales, Multifamily Bond Administrator, TDHCA
Ms. Leslie Bingham, Vice Chair, TDHCA Board of Directors
Ms. Sharon Thomason, Member, TDHCA Board of Directors
Mr. Paul A. Braden, Member, TDHCA Board of Directors
Mr. Leo Vasquez, Member, TDHCA Board of Directors
Judge Nelson Wolff, Bexar County
Rob Killen, Attorney, Killen, Griffin & Farrimond
Erin Bley, The Kaufman Group
Amy Putney, Bexar County



BUR OAK
MATURE HEIGHT : 40'-80'



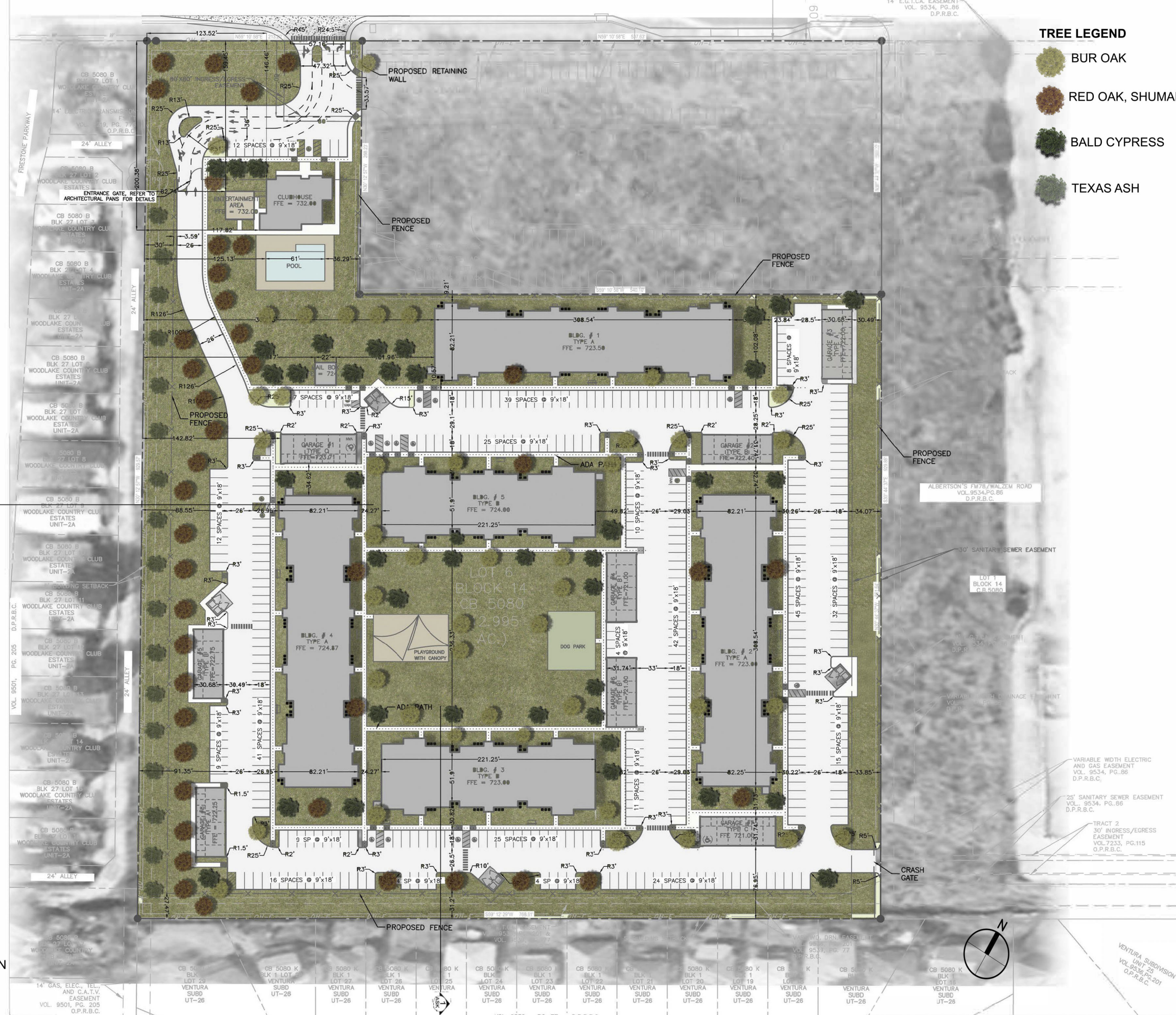
RED OAK, SHUMARD
MATURE HEIGHT : 40'-60'



BALD CYPRESS
MATURE HEIGHT : 50'-70'



TEXAS ASH
MATURE HEIGHT : 30'-45'



TREE LEGEND

-  BUR OAK
-  RED OAK, SHUMARD
-  BALD CYPRESS
-  TEXAS ASH


**HERMAN & KITTLE
PROPERTIES, INC.**
500 East 96th Street, Suite 300
Indianapolis, IN 46240
(317) 846-3111
www.hermankittle.com

THE MONTAGE
~7950 FM 78, San Antonio, TX 78244

**ARCHITECTURAL SITE
PLAN/LANDSCAPE -
VISIBILITY STUDY**

JOB NO.	DATE
18-016	08/24/20
SHEET NO.	
ASK - 001	



**HERMAN & KITTLE
PROPERTIES, INC.**

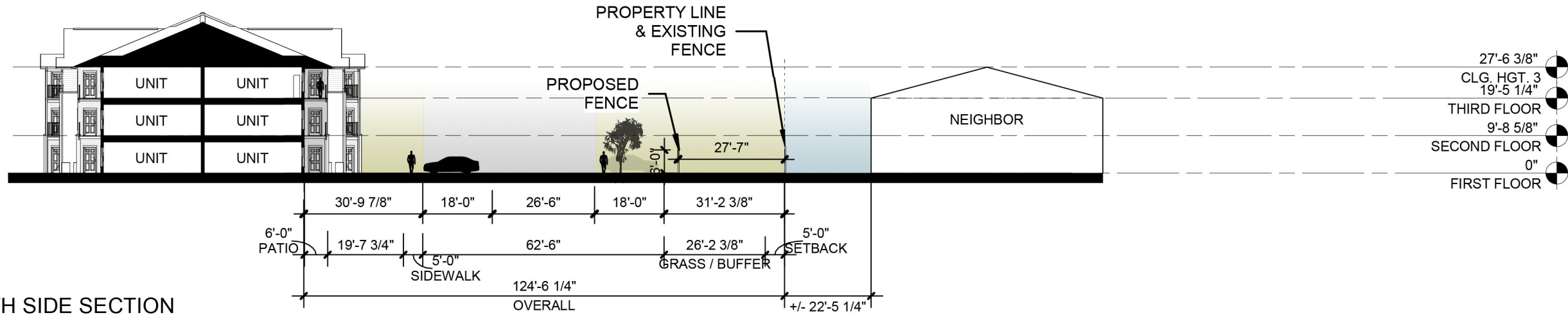
500 East 96th Street, Suite 300
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THE MONTAGE
~7950 FM 78, San Antonio, TX 78244

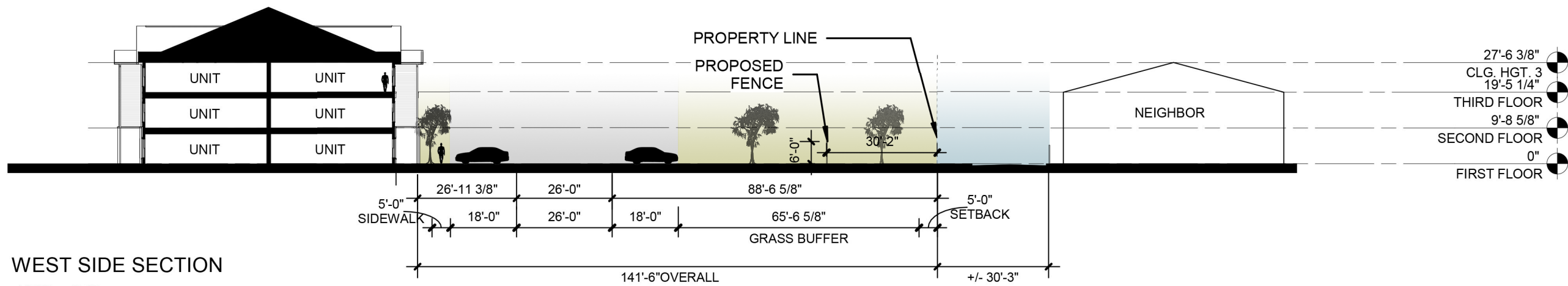
VISIBILITY STUDY

JOB NO.	DATE
18-016	11/24/20

SHEET NO.
ASK - 002



1 SOUTH SIDE SECTION
1/32" = 1'-0"



2 WEST SIDE SECTION
1/32" = 1'-0"

Public Comment



**TOMMY CALVERT
BEXAR COUNTY COMMISSIONER, PRECINCT 4**

June 9, 2020

Honorable Greg Abbott
Governor, State of Texas
1100 San Jacinto
Austin, Texas 78701

Dear Governor Abbott:

I am writing today to express my opposition to Texas Department of Housing and Community Affairs development number 20615 – a development by Herman and Kittle; located in northeast Bexar County Precinct 4. I am writing to ask your office to please communicate to your appointees on the board to vote against the granting of a state tax credit at this location for some of the following reasons.

Last year, Herman and Kittle participated in the most volatile town hall that I have seen in six years in office—residents of the area were uniformly opposed. The tide really turned against Herman and Kittle after members of the community did their own travel to a property operated by Herman and Kittle in New Braunfels, Texas. Our constituents took photos and placed them on a larger poster board for the community to see how poorly the company cared for their property at that location a few miles up IH-35 and another in the company's headquarters in Indiana. We just wanted you to be aware of some of the ratings and comments from the online reviews about the properties and hope you will protect us from becoming another poorly managed apartment community.

The community suggested that Herman and Kittle build a senior living facility, but the company did not follow up with a plan for such a facility. There are locations that would produce much less anger over increased traffic, crime, and economic decline, but in a sign of bad faith in listening to the community, the company has not chosen the path of community harmony for this northeast corridor. This community is not uniformly against affordable housing in northeast Bexar County. Just a few miles away, the NRP Group was able to get the support of neighborhoods who wanted affordable housing. The NRP Group drove them to their properties to see how well they are maintained and how they have not hurt property values, but we don't have a nearby quality comparison locally from Herman and Kittle.

There is a tremendous lack of trust because of the flip-flopping stances of the company. They abandoned working with the Bexar County Housing Finance Corporation after I would not grant support to the development. After those discussions broke off, Herman and Kittle said they would build a market rate apartment complex, which the community was not enthusiastic about, but at least they felt that they would be paying property taxes and contributing to police, fire, EMS, roads, and other services for the area. However, they went back on that promise too and are now asking taxpayers to give them an incentive and on top of that forgo paying taxes.

At a time that we need workforce and affordable housing because of an already large need that is now compounded by economic collapse and homelessness from the pandemic, the Herman and Kittle company has set the affordable housing community back and the programs that the state of Texas seeks to have assist working people. Other companies like NRP Group have helped to restore some faith and confidence, but the public relations and community trust have been fumbled where it's a loss for your office, your appointees, and the state agency that operates under the direction of your appointees.

I am requesting the company meet with residents surrounding the project site to see if they can work out setbacks, landscape buffers, crime concerns, transportation issues, and property value concerns. Unfortunately, we have seen the Texas Department of Housing and Community Affairs board members ignore the requests of the residents in another development across the street, in large part, because the laws in Texas favor the apartment developers over the residents. However, we believe that your leadership can provide better balance and a conservative solution to hold the line in the neighborhood from an over proliferation of low-income apartment complexes within a small area, when large swaths of property are available across the county with good school districts fitting the criteria set forth by TDHCA.

I am a supporter of affordable and workforce housing, but I respect even more the right of communities to shape their future and be governed in partnership with state leadership and live not in conflict with their government. Hence, I cannot support this project moving forward.

If you have any questions or would like to discuss this further, please call my office at 210-335-2614.

Always your voice,



Tommy Calvert
Bexar County Commissioner, Precinct 4

CC: State Senator Eddie Lucio, Jr., Chair, Intergovernmental Relations Committee
State Representative Angie Chen Button, Chair, Urban Affairs Committee
State Senator, Pete Flores, District 19
State Representative Barbara Gervin-Hawkins, District 120
Theresa Morales, Multifamily Bond Administrator, TDHCA
Ms. Leslie Bingham, Vice Chair, TDHCA Board of Directors
Ms. Sharon Thomason, Member, TDHCA Board of Directors
Mr. Paul A. Braden, Member, TDHCA Board of Directors
Mr. Leo Vasquez, Member, TDHCA Board of Directors



TOMMY CALVERT
Bexar County Commissioner, Precinct 4

December 10, 2020

Herman & Kittle
500 E 96th Street, Suite #300
Indianapolis, IN 46240

Dear Herman and Kittle:

I am writing you in response to the emailed letter I received on December 8, 2020. After reading your letter, I want to recap the public input that was missing. First, based on the community's review of your New Braunfels property where they visited the property in Comal County and found the property with many problems, they have asked that you find another location—they do not want to bring their area down. In addition, after community representatives reviewed an older property near your headquarters in Indiana, which had a low scoring review and images that were unattractive, the community does not want such a facility. The adherence to the Texas Department of Housing standards did not appear to have been followed when my constituents visited and took photos and presented them to over approximately 200 residents.

The three meetings you held did us little good to build trust because you left out key issues in your response letter. Unfortunately, those omissions are critical to public safety, the long-term economic development maintenance of this corridor, and the economic development of your property. This is not another NIMBY issue. Many of these residents have approved two other developments in the northeast area because they met the quality standards they desired—specifically one by NRP Group on Kitty Hawk and another by LDG on FM 1516. I think it would be in your company's best interest to look for a location that won't have as many hostile neighbors and start with a fresh community relations plan.

The items outlined in your letter were appreciated but seemed like a cookie-cutter approach, with the exception of reducing your quantity of apartments. This area has a higher standard for fighting blight and crime and wants businesses that take their request and follows through with the community's standards. We have offered the following suggestions to be constructive and I am sure once we bullet them you will recall that they were left out of your letter.

These items include:

- Nightly tow service to remove vehicles not registered to tenants—please enter into a partnership with a towing company for this
- Cameras in each of the four corners of the perimeter fencing facing inward to the property buildings

- Providing an on-site manager who lives on the property and/or assistant manager, security or maintenance person
- Creating a program to incentivize lower rent for law enforcement / public safety officers to live on the property
- A contribution to ESD 11 for the fire ladder truck they do not have that has a ladder tall enough to service your three-story building because you will not be paying property tax revenue.

We look forward to receiving an update on the items stated above and will be continuing our conversations with the community regarding this proposed development.

If you have any questions, please contact the office at (210) 335-2614.

Sincerely,



Tommy Calvert
Bexar County Commissioner, Precinct 4

CC: Governor Greg Abbott, State of Texas
State Senator Eddie Lucio, Jr., Chair, Intergovernmental Relations Committee
State Representative Angie Chen Button, Chair, Urban Affairs Committee
State Senator, Pete Flores, District 19
State Representative Barbara Gervin-Hawkins, District 120
Theresa Morales, Multifamily Bond Administrator, TDHCA
Elena Peinado, Senior Legislative Affairs Advisor, TDHCA
Mr. Leo Vasquez, Chair, TDHCA Board of Directors
Ms. Leslie Bingham, Vice Chair, TDHCA Board of Directors
Ms. Sharon Thomason, Member, TDHCA Board of Directors
Mr. Paul A. Braden, Member, TDHCA Board of Directors
Mr. Ajay Thomas, Member, TDHCA Board of Directors
Judge Nelson Wolff, Bexar County
Rob Killen, Attorney, Killen, Griffin & Farrimond
Erin Bley, Governmental Relations/Project Manager, The Kaufman Group, Inc.
Amy Putney, Bexar County



TOMMY CALVERT
Bexar County Commissioner, Precinct 4

January 4, 2021

Governing Board
Texas Department of Housing & Community Affairs
221 East 11th Street
Austin, Texas 78711-3941

Dear Board Members of the Texas Department of Housing and Community Affairs:

I am writing to let you know of the unresolved issues related to the application by Herman and Kittle.

First, based on the community's review of their New Braunfels property, the residents asked that Herman and Kittle find a new location.

The neighborhood leaders reported that the property exhibited gross poor mismanagement with many problems. The residents have asked Herman & Kittle to find another location—they do not want to bring their area down, citing "substandard construction". In addition, after community representatives reviewed an older property near the Herman and Kittle headquarters in Indiana, which had low scoring reviews and images that were unattractive, the community leaders have organized in opposition to such a facility being constructed in their neighborhood.

The adherence to the Texas Department of Housing standards did not appear to have been followed, when our constituents visited and took photos and presented them to over approximately 200 residents, who are actively trying to prevent Herman and Kittle from "ruining the neighborhood."

The three meetings the community organizers had with Herman and Kittle did little good to build trust because they left out key issues in their response letter.

Unfortunately, the omissions of the long-term economic development, maintenance of this corridor, and the economic development of the property are critical to public safety. This is not another NIMBY issue. Many of these residents

have approved two other developments in the northeast area, because they met the quality standards they desired—specifically one by NRP Group on Kitty Hawk and another by LDG on FM 1516.

I think it would be in the State's best interest for Herman and Kittle to choose another location that won't have as many highly organized, informed, and hostile neighbors as in the proposed location. Perhaps it would be in all the parties best interest for Herman and Kittle to start with a fresh community relations plan somewhere else.

The items outlined in the Herman and Kittle letter were not well received by the community leaders, because it seemed like a cookie-cutter approach, with the exception of reducing the quantity of apartments.

This area has a higher standard for fighting blight and crime and wants businesses that heed their request and follow through with the community standards. We have offered the following suggestions to be constructive and I am sure once we bullet them, Herman and Kittle will recall that they were left out of their letter.

These items include:

- Nightly tow service to remove vehicles not registered to tenants entering into a partnership with a towing company for this
- Cameras in each of the four corners of the perimeter fencing facing inward to the property buildings
- Providing an on-site manager who lives on the property
- Providing a manager, security, and/or maintenance person
- Creating a program to incentivize lower rent for law enforcement / public safety officers to live on the property
- A contribution to ESD 11 for the fire ladder truck. The fire department does not have a ladder tall enough to service the three-story building, because Herman and Kittle will not be paying property tax revenue.

We look forward to receiving an update on the items stated above and will be continuing our conversations with the community regarding their opposition to this proposed development.

I humbly ask the TDHCA board to deny the tax credit application for Herman and Kittle.

If you have any questions, please contact my office at (210) 335-2614.

Sincerely,

A handwritten signature in blue ink that reads "Tommy Calvert". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tommy Calvert
Bexar County Commissioner, Precinct 4

CC: Governor Greg Abbott, State of Texas
State Senator Eddie Lucio, Jr., Chair, Intergovernmental Relations Committee
State Representative Angie Chen Button, Chair, Urban Affairs Committee
State Senator Roland Gutierrez, District 19
State Representative Barbara Gervin-Hawkins, District 120
Theresa Morales, Multifamily Bond Administrator, TDHCA
Elena Peinado, Senior Legislative Affairs Advisor, TDHCA
Mr. Leo Vasquez, Chair, TDHCA Board of Directors
Ms. Leslie Bingham, Vice Chair, TDHCA Board of Directors
Ms. Sharon Thomason, Member, TDHCA Board of Directors
Mr. Paul A. Braden, Member, TDHCA Board of Directors
Mr. Ajay Thomas, Member, TDHCA Board of Directors
Mr. Brandon Batch Member, TDHCA Board of Directors
Judge Nelson Wolff, Bexar County
Rob Killen, Attorney, Killen, Griffin & Farrimond
Erin Bley, Governmental Relations/Project Manager, The Kaufman Group, Inc.
Amy Putney, Bexar County

June 5, 2020

Albert & Noelia Garcia

7832 Pecan Heights

San Antonio TRX 78244

Texas Department of Housing and Community Affairs

Attention: Theresa Morales Multifamily Bond Administrator

Reference: Tax application # 20615- The development of Montagne Apartments

Dear Madam:

I am writing this letter of opposition to the Tax Application # 20615. I am opposing to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold's Gym on FM 78 near the dangerous intersection near Walzem Road.

Even though I understand that this developer removed their application earlier for tax credits considerate by the state, the purpose of this letter is to still oppose any future efforts to bring forward a new application. By allowing this developer to build on this property adjacent to our neighborhood, the traffic congestion, the possibility of a decline of property value, and increase in crime all presents a negative picture for any positive growth.

I feel that the property would be ideal for retail use. This area could be better served by retail merchants, such as restaurants, stores that would help keep monies in this area instead of having to go elsewhere to enjoy a nice dinner rather than fast foods.

Thank you

Albert Garcia

Albert Garcia

From: bcarter47@att.net
To: [Teresa Morales](#)
Subject: No more multi-housing - our area has enough of what it brings
Date: Saturday, June 6, 2020 3:30:55 PM

Ms. Morales,

My husband and I are in our 70's; we have owned our home in Spring Meadows for 30+ years. We used to feel safe in the neighborhood, but then Hurricane Katrina came along and all the people evacuated moved into the mall on Walzem and the trouble began. They had to find a permanent place to live and the county made affordable (section 9) housing available. Most didn't have nor did they want jobs. The crime steadily climbed in the area. Young people wandered around at all hours and vandalized places where they broke in and had already stolen everything worth stealing. Home break-ins became common place. People of my age no longer walked in their neighborhoods and definitely didn't go out after dark. We only have Bexar county to protect us and they are spread thin. New houses are going up by the minute and they are no-down, low payment, no credit check. People who are moving in have no pride in homeownership. We have homes with trampolines, cars, inflatable two-story water slides, bbq grills, etc. are stored in front yards. We should have moved out long ago, but now we are too old to make another move. But, we are armed in case of a home invasion. Just in case. Please please no more low cost housing in our area of town. Wal-Marts are robbed in our area. Please we do not want to live in another ghetto. The Glen is just around the corner and that's too close. Take your apartment complexes to the other side of San Antonio; we already have enough trash.

In case you think we are ignorant residents – we are both retired Air Force and hold Master's degrees.

Sincerely,
Brenda K. Carter

From: [Brenda Minor](#)
To: [Teresa Morales](#)
Subject: Application for Apartments by Herman and Kittle Proposed to be Built at Walzem Road and FM 78
Date: Thursday, June 11, 2020 2:05:08 PM

JUNE 11, 2020

Texas Dept. of Housing and Community Affairs
Public Comment--Multifamily Finance Division
P.O. Box 13941
Austin, TX 78711-3941
Phone 512-475-3800 (main office)
Fax. 512-475-0764

Teresa Morales, Multifamily Bond Administrator
512-475-3344
Email: teresa.morales@tdhca.state.tx.us

ATTN: TDHCA Board of Directors Members of the TDHCA Board

Ms. Leslie Bingham, Vice Chair **Ms. Sharon Thompson**
Mr. Paul A Braden **Mr. Lee Vasquez**

Governor Greg Abbott
Office of Governor
P.O. Box 12428
512-463-2000

**Re: Application for Apartments by Herman and Kittle Proposed to be Built at
Walzem Road and FM 78**

From: Brenda J. Minor

Ventura I Subdivision Resident

7554 Lincoln Village Dr.

San Antonio. TX. 78244-1517

Email brenearn@sbcglobal.net

210-601-0330

I am writing to inform you that "I OPPOSE" the proposed plan of " Herman Kittle" to build the Apartments in said location due to insufficient infrastructure. It does not support this type of housing.

Sincerely,

Brenda J. Minor

From: [Elena Peinado](#)
To: [Teresa Morales](#)
Cc: [Jonathan Galvan](#); [Shannon Roth](#)
Subject: FW: Montage Apartment (Development #20615)
Date: Thursday, October 29, 2020 3:26:12 PM

Teresa,

Another email regarding Montage Apartment. Since you were not included in this one, am forwarding and ccing Jonathan and Shannon.

-----Original Message-----

From: Brian Murray <bmurray78244@gmail.com>
Sent: Thursday, October 29, 2020 3:21 PM
To: Elena Peinado <elena.peinado@tdhca.state.tx.us>
Cc: tc@bexar.org
Subject: Montage Apartment (Development #20615)

Request you disapprove the applications pertaining to the development of affordable rental housing in our community. We, (As single family homeowners) have had several meetings to discuss this proposal with the Montage Apartment developer and Councilman Tommy Calvert to vehemently oppose this affordable rental housing in the proposed location for some of the following reasons:

A) We are in a 200-300k single home golf-course community just South of the proposed building site. If approved, property values of our homes will plummet significantly below market value. We've even suggested other locations within several miles further South on 78 in an area with more commensurate home values.

B) The Walzem Rd, FM 78 Intersection already has an over abundance of traffic during morning and especially afternoon rush hours due to new developments in the area. A traffic study needs to be accomplished in this area. (Currently an apartment complex is going up on Walzem Rd behind the Randolph Brooks Federal Credit Union across the street from the proposed location which will already exacerbate this situation)

C) An overcrowding of our schools in the Judson ISD System, along with inadequate Sheriff, Police and Fire protection for the 2 additional apartment rental complexes on the 2 corners. (If built 3 stories, Fire Dept would need a hook and ladder to reach)

Respectfully request the members of the Texas Department of Housing and Community Affairs governing board disapprove the two finance applications for this affordable rental housing in this location.

Brian P. Murray
7315 Sawgrass
San Antonio, TX, 78244

Sent from my iPad

Sent from my iPad

From: lmaranto@aol.com
To: [Teresa Morales](#)
Subject: Herman and Kittle Proposed Apartment Development
Date: Tuesday, June 2, 2020 4:42:46 PM

To Teresa Morales:

I want to express my strong disapproval for the subject apartment development planned at the intersection of Walzem Road and FM 78 in Bexar County, Texas.

I live in the neighborhood next to the proposed site. It should definitely not be financed through the Housing Tax Credits-Non Competitive 4% and TDHCA Tax Exempt Bonds.

The traffic at that intersection is horrible and cannot sustain more of it. It is already an unsafe intersection with far too many accidents.

Furthermore, the Judson Independent School District is currently overcrowded. The additional students from the proposed apartment complex would have a very negative impact on an already overcrowded school district.

Additionally, and most importantly the apartment complex would not be compatible or congruous to the single family homes in the surrounding neighborhoods.

Your support in disapproving the Herman and Kittle funding request would be greatly appreciated by all who currently live in the area.

Sincerely,

Leonard J. Maranto
7307 Sawgrass
San Antonio, Tx. 78244

Name: Irma Kramer
Address: 7819 Pecan Heights
San Antonio, Tx. 78244

Re: Tax application #20615: development of Montagne Apartments
Attn: Theresa Morales Multifamily Bond Administrator
Texas Department of Housing and Community Affairs

Dear Madame,

The purpose of this letter is to voice opposition to the future Herman and Kittle apartments at the intersection of Walzem Road and FM 78.

My property butts up right behind the proposed development, and as a single woman and senior citizen I am extremely concerned with my safety and privacy.

It is not uncommon for violence and disorderly behavior to be prevalent in these units so security becomes a prominent issue. Providing safety measures like video surveillance, 24 hour security or visitor screening do not always mitigate the high crime rates of public housing.

There is also the potential fear that residents could be ex-convicts or other undesirable sorts who will impact the quality of life of their neighbors.

I appreciate anything that can be done on behalf of the community in this neighborhood.

Respectfully submitted.

From: ljmaranto@aol.com
To: [Teresa Morales](#)
Cc: [Elena Peinado](#)
Subject: Fwd: Montage Apartments (Development # 20615)
Date: Thursday, October 29, 2020 11:57:16 AM

From: ljmaranto@aol.com

Subject: Montage Apartments (Development # 20615)

Comments regarding two programs:

Housing Tax Credits-Non Competitive 4%

TDHCA Tax Exempt Bond

The proposed Montage project is located in Bexar County on SWQ of Walzem Road and FM 78.

I along with all my neighbors strongly oppose the proposed financing of this apartment complex. We live in a beautiful single family neighborhood that adjoins the proposed multifamily rental housing which is not needed in our community.

Please do not approve the planned funding of this project as it will greatly reduce the value of our single family housing in this area of Bexar County.

We currently lack sufficient fire and police protection, and there is a great traffic problem on FM 78. These problems will only get much worse with the planned apartments. Furthermore, the addition of the many more new students will have a negative impact on the Judson Independent School District stressing existing facilities and programs.

In closing, we as homeowners respectfully request that the Texas Department of Housing and Community Affairs Governing Board disapprove the two finance applications for the Montage Apartments.

Sincerely,
Leonard J. Maranto
7307 Sawgrass
San Antonio, Texas 78244

Community against Herman and Kittle proposed Apartments 78 and Walzem

About this petition

Dear Board Members:

We the Homeowners and Residents of the following subdivisions that this proposed project will directly impact are Brentfield, Woodlake, and the Estates/Mission Hills and the 29 other communities that will be indirectly impacted by this development. This petition is to express in the strongest terms possible THAT WE ARE AGAINST, TAX APPLICATION #20615 THE MONTAGE APARTMENTS

This project adds no value to the community however, it does bring with it a lot of baggage; more traffic on a already taxed corridor, rise in crime in which this area has been targeted as a high crime area by the sheriff department, property values will go down, and as far as future developments, developers will look the other way, and schools are at capacity. We already have two affordable housing projects(Section 8) within five miles, and one being built as we speak, and two more on the board all with five miles of each other. THIS AREA HAS HAD ENOUGH FIND SOMEWHERE ELSE TO BUILD THEM.

To sign your name click on the link below.

<http://www.ipetitions.com/petition/community-against-herman-and-kittle-apartments>

Signatures

1. Name: Ronald Wright on 2020-10-26 22:20:54
Comments:

2. Name: Tamika Lee on 2020-10-26 23:46:18
Comments:

3. Name: Stephen Glover on 2020-10-26 23:48:08
Comments:

4. Name: Diahn Davis on 2020-10-27 01:55:13
Comments:

5. Name: Monica L Miller on 2020-10-27 01:55:50
Comments:

6. Name: Bernie Gonzalez on 2020-10-27 02:44:55
Comments: Not happy with more apartments for low cost rental this brings more crime in are area don't need this

7. Name: Denise Roberts on 2020-10-27 02:45:15
Comments: Let's bring the quality of this area up, not down. There's already too much crime degrading it!

8. Name: Elena Palanca on 2020-10-27 02:49:04
Comments: We need to protect the standard of the our properties and the peace and order. We work very hard to be able to buy in a decent neighborhood and we need to keep it to the standards it need to be.

9. Name: Ezequiel Garcia on 2020-10-27 02:49:44
Comments:

10. Name: TNA hawt on 2020-10-27 03:18:22
Comments:

11. Name: Veronica Soria on 2020-10-27 03:24:57
Comments:

12. Name: Victor Sanford on 2020-10-27 03:26:08
Comments: No to the building of new apartment's

13. Name: Fred Vasquez on 2020-10-27 03:33:28

Comments: In 1968, LBJ signed the Fair Housing Act (FHA). In 2015 Obama-Biden issued EO twisting FHA into Affirmatively Furthering Fair Housing (AFFH) to push low income housing into American suburbs; what's being proposed here. In July 2020, POTUS DJT resinded AFFH, defending the American dream of working Americans to own a nice home in a nice neighborhood.

14. Name: Edward Gomes on 2020-10-27 03:43:45
Comments:

15. Name: Samantha on 2020-10-27 03:46:59
Comments:

16. Name: Monica Martinez on 2020-10-27 03:58:07
Comments:

17. Name: Curtis bitterly on 2020-10-27 04:05:50
Comments:

18. Name: Margie Garcia on 2020-10-27 04:28:14
Comments:

19. Name: Vinnie Bilotto on 2020-10-27 06:12:19
Comments:

20. Name: Lisa Kempo on 2020-10-27 07:06:47
Comments:

21. Name: Jacqueline Cade on 2020-10-27 07:45:47
Comments:

22. Name: Angela Rodriguez on 2020-10-27 09:52:08
Comments:

23. Name: Dolores Sloan on 2020-10-27 11:11:21
Comments: We definitely don't need more crime or taxes raised in this area.

24. Name: Megan Clemens on 2020-10-27 12:41:02
Comments:

25. Name: Brian Barta on 2020-10-27 14:06:48
Comments:

26. Name: Amber Zavala on 2020-10-27 14:19:02
Comments:
-
27. Name: Janice Weiss on 2020-10-27 14:34:59
Comments:
-
28. Name: Chaquille Hicks on 2020-10-27 14:53:42
Comments:
-
29. Name: Raymond Gardner on 2020-10-27 15:26:32
Comments:
-
30. Name: Maynard Smith on 2020-10-27 15:52:02
Comments:
-
31. Name: Karen Luera on 2020-10-27 15:59:49
Comments: We don't need anymore apartment complexes in this area. There is already too much traffic on FM 78 and adding more apartments will only add to the traffic congestion, bad roads, and increased crime.
-
32. Name: Corinne Gutierrez on 2020-10-27 17:19:05
Comments:
-
33. Name: Terrie I Wier on 2020-10-27 18:39:30
Comments:
-
34. Name: Edward smith on 2020-10-27 21:14:05
Comments:
-
35. Name: Charles L Cabello on 2020-10-27 22:28:50
Comments:
-
36. Name: Yolanda Holmes on 2020-10-27 23:22:33
Comments: We do not want or need more apartment housing in the area
-
37. Name: Clyde Howard Gordon Jr on 2020-10-28 00:02:37
Comments: We don't need this type of housing in this part of San Antonio.
-
38. Name: Patricia Rivera on 2020-10-28 00:04:35
Comments: We do not need another apartment complex in this area. The traffic is atrocious as well as the crime rate.
-

39. Name: John Jammal on 2020-10-28 01:01:16
Comments:
-
40. Name: Tonia Burgett on 2020-10-28 01:53:58
Comments:
-
41. Name: Martha kuzara on 2020-10-28 02:47:45
Comments: Agreed
-
42. Name: Melissa R on 2020-10-28 03:16:59
Comments:
-
43. Name: Phoebe Collins on 2020-10-28 03:23:23
Comments:
-
44. Name: Rene RunningDeer on 2020-10-28 08:42:57
Comments:
-
45. Name: Linda Mayer on 2020-10-28 10:50:09
Comments:
-
46. Name: Rob Estrada on 2020-10-28 12:48:18
Comments:
-
47. Name: Jennifer Wiley on 2020-10-28 13:15:55
Comments:
-
48. Name: Stephen Matthews on 2020-10-28 13:30:30
Comments:
-
49. Name: Daniel Diaz on 2020-10-28 13:59:52
Comments:
-
50. Name: Mike Sherman on 2020-10-28 14:56:22
Comments:
-
51. Name: Melissa Jones on 2020-10-28 15:17:14
Comments: I don't want another housing development in this area already saturated with housinf
-
52. Name: Daniel Aguilar on 2020-10-28 16:54:08
Comments: Will cause add unnecessary traffic problems. How many apartments will be

built what % will be Section 8? Daniel Aguilar

53. Name: Concepcion Jaimes Diaz on 2020-10-28 17:56:16
Comments: None

54. Name: Sharon Vinston on 2020-10-28 19:32:29
Comments: none

55. Name: Tommy Hennigar on 2020-10-29 00:14:27
Comments:

56. Name: Stacy Althen on 2020-10-29 03:29:02
Comments:

57. Name: Zanita Reed on 2020-10-29 03:36:02
Comments:

58. Name: Debbie Duhart Anderson on 2020-10-29 03:56:27
Comments:

59. Name: Beatrice Manti on 2020-10-29 03:57:47
Comments: Keep me posted on updates.

60. Name: Peter Althen on 2020-10-29 04:41:55
Comments:

61. Name: Tierny Wright on 2020-10-29 11:10:25
Comments:

62. Name: Terris Rangel on 2020-10-29 11:20:15
Comments: Walzem Road, which used to dead end with our community, has now been extended to 1516 and over 600 homes are being built less than 200 yards from where Herman & Kittle want to build! That is adding an additional 1200 cars through this area, along w/800-900 more students!! STOP IT!! Enough is Enough!! This area is "locked" in by the rail road tracks at Gibbs Sprawl Road! Do you understand what this will do to our accessibility for law enforcement? Emergency services? Our Schools? Stop this madness please!

63. Name: DeMario Wright on 2020-10-29 12:07:34
Comments:

64. Name: Tracy Harter on 2020-10-29 12:08:01
Comments:

-
65. Name: Charlene A Strysko on 2020-10-29 12:39:27
Comments:
-
66. Name: LaSandra Grant on 2020-10-29 13:27:42
Comments:
-
67. Name: MARK WEST on 2020-10-29 13:40:39
Comments: THANKS
-
68. Name: Geraldine Anderson on 2020-10-29 13:41:24
Comments:
-
69. Name: Jazlynn Hairston on 2020-10-29 13:45:50
Comments: No need, a bit excessive at this point
-
70. Name: Daniel Torres on 2020-10-29 13:47:25
Comments:
-
71. Name: HATTIE BROWN on 2020-10-29 14:28:54
Comments: Against
-
72. Name: Cindy Cillo on 2020-10-29 14:39:18
Comments:
-
73. Name: Juan Borrás on 2020-10-29 17:35:25
Comments: WE ARE AGAINST, TAX APPLICATION #20615 THE MONTAGE APARTMENTS
-
74. Name: Katherine Herbert on 2020-10-29 17:43:06
Comments:
-
75. Name: Juanita Sanchez on 2020-10-29 23:17:22
Comments: We already have a 200 plus apartment complex going up on FM 78 and Walzem that is bringing more traffic and crime that we can handle. We certainly don't need another 200 apartment complex across the street. We don't need more congestion in an already congested area.
-
76. Name: Jason Humphrey on 2020-10-29 23:42:32
Comments:
-
77. Name: Timothy J Harter on 2020-10-30 00:43:19

Comments: Please stop, housing and the traffic is already a nightmare where you want to build

78. Name: Ashantee Humphrey on 2020-10-30 01:37:55
Comments:

79. Name: Wanda Cross on 2020-10-30 02:06:56
Comments: We are having too much traffic. We already have 2 affordable housing projects within 5 miles. We do not need this. Take it somewhere else

80. Name: Donell Cross on 2020-10-30 02:09:54
Comments:

81. Name: Gloria B Walker on 2020-10-30 05:20:05
Comments: Against the property to be built by Her and kittle

82. Name: Erin Hicks on 2020-10-30 09:55:15
Comments:

83. Name: Rocio Alvarez on 2020-10-30 13:54:45
Comments:

84. Name: Milissa Broll on 2020-10-31 03:33:05
Comments:

85. Name: Licet Cruz on 2020-10-31 16:15:55
Comments: Nope not good for our community

86. Name: Adolph Escobedo on 2020-10-31 21:26:16
Comments:

87. Name: B to Pena on 2020-10-31 21:33:19
Comments:

88. Name: Linda Garza on 2020-11-01 03:41:34
Comments:

89. Name: Miranda Escobedo on 2020-11-01 10:58:57
Comments:

90. Name: Joseph Cavazos on 2020-11-02 03:32:53
Comments:

91. Name: Rachel Mullenbach on 2020-11-02 15:15:00
Comments:

92. Name: Norman Weaner on 2020-11-02 15:16:18
Comments:

93. Name: Erick Velez on 2020-11-02 17:14:42
Comments:

94. Name: Kimberly Aldana on 2020-11-02 17:17:04
Comments:

95. Name: Shannon Hastings on 2020-11-02 17:28:12
Comments:

96. Name: Tatyana Williams on 2020-11-02 17:34:16
Comments:

97. Name: Paul Canuel on 2020-11-02 17:38:42
Comments:

98. Name: Bruce Klayman on 2020-11-02 17:39:12
Comments:

99. Name: Ashley Foust on 2020-11-02 18:37:11
Comments:

100. Name: Leticia Gomez on 2020-11-02 18:47:35
Comments:

101. Name: Edgar Garcia on 2020-11-02 19:07:39
Comments:

102. Name: Janice Turner on 2020-11-02 19:10:52
Comments:

103. Name: Arlene Murphy on 2020-11-02 19:43:39
Comments:

104. Name: L Fronk on 2020-11-02 22:54:30
Comments:

-
105. Name: Christina Marie Lopez on 2020-11-03 00:24:17
Comments: Please don't build this. We have so much traffic here in the area already
-
106. Name: Diana Erdman on 2020-11-03 01:03:39
Comments: No!
-
107. Name: Gerardina Nieves on 2020-11-03 01:09:06
Comments: not in favor
-
108. Name: Charles Rehome on 2020-11-03 02:26:30
Comments: No!!!
-
109. Name: Mona Kret on 2020-11-03 12:07:20
Comments: Already way too much traffic at this intersection. These apts will affect our property values.
-
110. Name: Lauren Sullivan on 2020-11-03 13:19:45
Comments:
-
111. Name: Javier Saldivar on 2020-11-03 14:17:57
Comments:
-
112. Name: Kayley on 2020-11-03 14:56:07
Comments:
-
113. Name: Robert Gentner on 2020-11-03 15:33:45
Comments: Over crowding iof area has caused many accidents. I have lived here since 1987 and construction of housing has made it unlivable here.
-
114. Name: Sally Pena on 2020-11-03 15:56:43
Comments:
-
115. Name: Steve Carr on 2020-11-03 16:48:38
Comments:
-
116. Name: Maria Mendez on 2020-11-03 18:24:13
Comments: We need a working system and we need to start whit the things that aren't working first before adding more people!
-
117. Name: Cheryl Mora on 2020-11-03 19:13:20
Comments:

-
118. Name: Douangchanh Montez on 2020-11-03 21:08:50
Comments:
-
119. Name: Sidney lankford on 2020-11-04 01:32:13
Comments:
-
120. Name: Jacob Aiden on 2020-11-04 04:55:36
Comments:
-
121. Name: Heriberto Trevino on 2020-11-04 14:47:26
Comments: This intersection is becoming a nightmare with high traffic and accidents. We don't need anymore apartments that will increase traffic.
-
122. Name: Theateasha Griffin on 2020-11-04 18:44:10
Comments:
-
123. Name: Margaret on 2020-11-04 18:52:53
Comments:
-
124. Name: Cindy Stoltz on 2020-11-06 03:12:31
Comments:
-
125. Name: Darrell Bellamy on 2020-11-06 15:15:28
Comments: Those of us residing in Ventura One know the extreme difficulty trying to turn left onto FM 78 today. Plus the added apts now being constructed in our backyard will bring added traffic and crime to an already stressed area. We are opposed to the construction of these proposed apartments.
-
126. Name: Jorge L Tapia Cantres on 2020-11-10 15:55:03
Comments: Not good for our area. Traffic is already terrible.
-
127. Name: Baldo Lozano on 2020-11-10 17:43:49
Comments:
-
128. Name: Leta A Young on 2020-11-10 17:45:17
Comments:
-
129. Name: John Mammano on 2020-11-10 17:52:04
Comments:
-
130. Name: Sebastian Jovell on 2020-11-10 17:53:33

Comments:

131. Name: adam cruz on 2020-11-10 17:53:41
Comments:

132. Name: Amanda Smith on 2020-11-10 17:53:51
Comments: FM 78 and Walzem is already a heavily congested area. Over the years, I've seen many accidents involving cars and pedestrians there. Please don't jeopardize anymore lives by building a massive apartment complex to the area that wouldn't add any value to the residents of nearby subdivisions.

133. Name: irma kramer on 2020-11-10 17:57:39
Comments: It's discouraging to see our tax dollars at work like this. Because their rent is subsidized or possibly free, these types of tenants feel less invested in the property which can result in irresponsible and careless behavior. Research shows that typically section 8 tenants cause more damage to the property, can be more difficult to manage and often allow garbage and junk to pile up.

134. Name: Erica Rushing on 2020-11-10 17:59:09
Comments:

135. Name: Michelle on 2020-11-10 18:06:31
Comments:

136. Name: Ryan Fontanella on 2020-11-10 18:13:45
Comments: There is not enough infrastructure in the region to support this. Traffic flow and accidents are already exuberantly high in this region due to the existing traffic patterns so adding another housing development of any type is not benefitting this community.

137. Name: alberto garcia on 2020-11-10 18:15:49
Comments: My family and I completely oppose application #20615, the building of more apartments in our community makes no sense with the amount of traffic and crime already present.

138. Name: Radovan Novovic on 2020-11-10 18:20:03
Comments: N/A

139. Name: William Gardner on 2020-11-10 18:27:02
Comments:

140. Name: Dexter Dennis on 2020-11-10 18:38:11
Comments: My family and I are totally against the proposed apartments being constructed on FM 78 and Walzem, this will increase traffic and add to an already influx

of crime in the area.

141. Name: Carmen montilla on 2020-11-10 18:40:11
Comments: We the Homeowners and Residents of the following subdivisions that this proposed project will directly impact are Brentfield, Woodlake, and the Estates/Mission Hills and the 29 other communities that will be indirectly impacted by this development. This petition is to express in the strongest terms possible THAT WE ARE AGAINST, TAX APPLICATION #20615 THE MONTAGE APARTMENTS
-
142. Name: william miranda on 2020-11-10 18:41:01
Comments: We the Homeowners and Residents of the following subdivisions that this proposed project will directly impact are Brentfield, Woodlake, and the Estates/Mission Hills and the 29 other communities that will be indirectly impacted by this development. This petition is to express in the strongest terms possible THAT WE ARE AGAINST, TAX APPLICATION #20615 THE MONTAGE APARTMENTS
-
143. Name: Grace Ferguson on 2020-11-10 18:52:53
Comments: As a community member, I am 100% AGAINST this proposed apartment complex being built!
-
144. Name: Alfredo Briones on 2020-11-10 18:57:40
Comments: My family and I completely oppose application #20615, the building of more apartments in our community makes no sense with the amount of traffic and crime already present.
-
145. Name: Yahaira D Rivera on 2020-11-10 19:31:39
Comments:
-
146. Name: Jose M Rivera on 2020-11-10 19:33:33
Comments:
-
147. Name: RUPINDER P SINGH on 2020-11-10 19:41:36
Comments: I say NO to this
-
148. Name: Louis Lance Cortines on 2020-11-10 20:05:42
Comments: I am against Herman and Kittle proposed Apartments 78 and Walzem
-
149. Name: robyn on 2020-11-10 20:27:39
Comments:
-
150. Name: Brian Collins on 2020-11-10 20:47:59
Comments:
-
151. Name: Lashedra Burks on 2020-11-10 20:48:26

Comments:

152. Name: Karen Moore on 2020-11-10 21:01:52
Comments:

153. Name: Deidre A Figures Cobbins on 2020-11-10 21:24:16
Comments:

154. Name: Steven Giron on 2020-11-10 22:19:50
Comments: I would not like to have a ride in traffic/crime due to these apartments being developed.

155. Name: Rita Robles on 2020-11-10 22:51:12
Comments:

156. Name: Arelis Hernandez on 2020-11-10 23:08:52
Comments: against tax application #20615 The Montage Apartments against Herman and Kittle proposed Apartments 78 and Walzem

157. Name: Marci Deyhle on 2020-11-10 23:23:35
Comments:

158. Name: Jessica Castellanos on 2020-11-11 02:42:47
Comments: I am against the building of these apartments.

159. Name: Adolph Escobedo on 2020-11-11 03:13:18
Comments:

160. Name: Donnie S Cromartie on 2020-11-11 03:29:10
Comments:

161. Name: Garinia Williams on 2020-11-11 05:41:24
Comments: Enough already!

162. Name: Chantel Haecker on 2020-11-11 13:51:49
Comments: As a resident of Brentfield I am strongly against the building of this apartment complex. The roads around our area are congested and are already in terrible condition. The schools are at capacity and this complex will do nothing more than being our property values down.

163. Name: cornellious jones on 2020-11-11 14:52:06
Comments: I vote NO!!!!

164. Name: Paul Rushing on 2020-11-11 15:56:22
Comments:
-
165. Name: Nancy Rushing on 2020-11-11 16:07:09
Comments: This area has several section 8 apartment complexes. There is a big increase in the amount of traffic. This area has gone from a quiet suburb to a noisy congested area.
-
166. Name: Shirley A Conquest on 2020-11-11 18:27:56
Comments: Safety is a priority...
-
167. Name: Daniel Torres on 2020-11-11 20:15:44
Comments:
-
168. Name: Kara Maison on 2020-11-12 12:12:10
Comments:
-
169. Name: Samuel D Williams II on 2020-11-12 20:30:51
Comments: No need for these apartments will cause more crime and more traffic
-
170. Name: Benjamin E Alvarez on 2020-11-16 01:51:36
Comments:
-
171. Name: Kay Kavanaugh on 2020-11-16 02:28:47
Comments:
-
172. Name: Alejandro Galvan on 2020-11-16 03:40:44
Comments: It's unacceptable to try and do this in a community that is already at capacity with schooling and an increased crime rate. This will certainly be something to take into consideration when local public office elections come around!!!
-
173. Name: Wendy Valdez on 2020-11-16 15:57:10
Comments:
-
174. Name: Elva Allen on 2020-11-16 16:00:30
Comments:
-
175. Name: Clarence Denis Jr on 2020-11-16 16:36:12
Comments:
-
176. Name: Teresa Ortiz on 2020-11-16 16:54:37
Comments:
-

177. Name: David Vincent on 2020-11-16 17:13:08
Comments:
-
178. Name: Alejandra Rivera on 2020-11-16 17:36:37
Comments: I'm against Herman and Kittle proposed Apartments 78 and Walzem
-
179. Name: Edward Rogerzinsky on 2020-11-16 18:02:52
Comments:
-
180. Name: Alma Hernandez on 2020-11-16 18:14:35
Comments:
-
181. Name: Terry Cooper on 2020-11-16 18:35:26
Comments: We have enough traffic and crime in this area. This housing project will negatively impact our property values as well.
-
182. Name: Melina Rodriguez on 2020-11-16 18:49:53
Comments:
-
183. Name: Mark Fair on 2020-11-16 19:27:19
Comments: No more apartments in my neighborhood please
-
184. Name: Angie Borrás on 2020-11-16 19:28:56
Comments: In addition, City officials should reconsider retrofitting empty hotels into community developments for single parents. Why is the taxpayer for full apartments/houses as a reward for need? Instead, let's motivate them and at the bottom have a fitness, career, child development centers as well as one large mess hall ran and maintained by seniors within same community. They'll be the constant providing guidance and such? Can we get people on board on this? Write your Congressmen? Reshape our subsidy dollar? Call or text me... 2108234560
-
185. Name: Herman Brooks on 2020-11-16 21:35:13
Comments:
-
186. Name: Kevin Holmes on 2020-11-16 21:48:18
Comments: I am against adding additional apartments to an already congested area. This devalues the property of individuals that are property owners and tax payers.
-
187. Name: Gene Rivers on 2020-11-16 22:41:23
Comments:
-
188. Name: Sandra Mahoney on 2020-11-16 22:45:08
Comments: I read recently Texas has a lot of un develop land.

-
189. Name: Nadine Pitts on 2020-11-16 23:12:01
Comments:
-
190. Name: Jesus V Gonzales on 2020-11-17 00:38:25
Comments:
-
191. Name: Rudy Villareal on 2020-11-17 00:48:01
Comments:
-
192. Name: Lynn Erdman on 2020-11-17 01:07:32
Comments:
-
193. Name: robert robles on 2020-11-17 01:37:10
Comments:
-
194. Name: Alison Emmert on 2020-11-17 02:48:13
Comments:
-
195. Name: Liz Doan on 2020-11-17 07:54:04
Comments: I am strongly against more low income apartments/housing development in our area. We have a high crime rate and traffic is very congested at all times. Please NO!!!
-
196. Name: Erica Jaure on 2020-11-17 16:26:14
Comments:
-
197. Name: Milton Nieves on 2020-11-17 19:25:17
Comments: against it
-
198. Name: Harry Sutherland on 2020-11-18 03:44:51
Comments: Please vote to NOT allow this project to progress as it will affect traffic, crime and overall safet, and devalue the adjacent property.
-
199. Name: Luis Guzman on 2020-11-18 06:42:40
Comments: Please no more apartments and traffic.
-
200. Name: Teresa Huerta on 2020-11-18 10:17:52
Comments:
-

201. Name: Cheri West on 2020-11-18 15:00:59
Comments: I'm against Herman& Kittle building the proposed apartments
-
202. Name: Shedrick Davis on 2020-11-18 17:30:38
Comments: Let's not make poor equal bad and rich equal good. We can/should/must do better.
- If you have faith, what will you tell God when she asks you did you shelter the poor? I doubt that anyone will mention property value.
-
203. Name: Michael O'Connor on 2020-11-19 12:48:50
Comments:
-
204. Name: Kenya Davis on 2020-11-20 02:34:10
Comments: Totally Against it.
-
205. Name: Norma Morin on 2020-11-20 16:44:04
Comments:
-
206. Name: Genesis Escobedo on 2020-11-23 18:33:07
Comments:
-
207. Name: Estrella Martinez on 2020-11-25 02:16:45
Comments:
-
208. Name: Adam Cruz on 2020-11-25 02:40:56
Comments:
-
209. Name: Jessic Avelar-Acevedo on 2020-11-25 23:10:24
Comments:
-
210. Name: Shirin R OConnor on 2020-12-02 03:07:39
Comments: Please - this neighborhood has no infrastructure for the proposed plan: no YMCA, no entertainment - just gas stations, a bar, a liquor store and restaurants in strip malls...no jobs...not enough Emergency Services...Traffic And accidents are already a problem at Walzem/78; and Judson School is overfilled.
-
211. Name: Frank J Hernandez on 2020-12-03 22:04:33
Comments: No to the apartments.. Very bad location with congestion already and too many traffic accidents directly in front of the proposed location.
-
212. Name: Anna M Salazar on 2020-12-03 22:26:14
Comments:

213. Name: Leonard Aguirre on 2020-12-04 04:21:35
Comments:

214. Name: Jo Chacon on 2020-12-04 17:09:58
Comments:

215. Name: Patricia Blas on 2020-12-04 20:35:10
Comments:

216. Name: Andrea Ruiz on 2020-12-04 20:56:37
Comments:

217. Name: Miguel Ruiz on 2020-12-04 20:57:21
Comments:

218. Name: Christopher Thompson on 2020-12-04 21:37:53
Comments:

219. Name: Theateasha Griffin on 2020-12-04 22:06:24
Comments:

220. Name: Curt Meyer on 2020-12-04 22:37:17
Comments:

221. Name: Kelvin R Moradel on 2020-12-05 00:08:33
Comments: Homeowner in the Mission Hills Estates and Total against the proposed Section 8 housing. Brings no value or added benefit to the surrounding community.

222. Name: daniel fagundo on 2020-12-05 15:12:53
Comments: traffic already is real bad. imagin with those apartments here. please stop. we are a quiet community dont need more trouble.

223. Name: Sabine Holder on 2020-12-05 17:53:23
Comments:

224. Name: Dennis Killian on 2020-12-06 03:50:26
Comments: The traffic is already terrible and adding possibly many, many more makes no sense. The poor people in Ventura cannot exit now. FM78 is a major road to get from Ft Sam to the east and from Randolph to the west. There are many new businesses developed on FM 78 around FM 78 and Walzam intersection. Not to mention the new apartment building on Walzam and FM 78 intersection.

225. Name: Scott Whitley on 2020-12-11 02:35:07
Comments:

226. Name: Melynde Bowers on 2020-12-12 09:45:21
Comments:

227. Name: Ronald Bowers on 2020-12-12 09:46:21
Comments:

228. Name: Matthew C on 2020-12-18 01:00:58
Comments:

229. Name: Lori A Dumlao on 2020-12-18 03:17:05
Comments:

230. Name: Ashley Cavazos on 2020-12-18 03:41:12
Comments: Please do not build here. We love the value of our homes and the traffic in this area is terrible and crime is already high. This will cause more issues.

231. Name: Ricardo Velazquez on 2020-12-18 10:37:04
Comments:



This petition has collected
231 signatures
using the online tools at www.ipetitions.com

Printed on 2020-12-18

ITR Teresa Monoky

11/9/20

Proposed Multifamily Housing Proposal

Address 784 Walzem Pond, San Antonio TX 78244

Traffic-Hillway 78 in this area is already barely usable at 8am + 5pm, time seems another 200 family unit is now under construction directly across Hillway 78 from this proposed location. All of this will be added to current overland this location is adjacent to a nice subdivision of retired, military & other people who work hard to have an above average neighborhood this location would have an overland of low income people & NOT be in a market where good well paying jobs are available (it is not "good governing" to put those people in this low pay area & pay their rent so they can not prosper & move away
I could go on but will let you go-

Forlisa Morales

2

Please - Look AT This ~~from~~ From OUR
+ THE POTENTIAL VIEW. & NOT JUST
FROM THE BUILDER & OTHER PROFIT
MAKERS VIEW

YOUR TRULY
Wm B McGaughy

Mr. William B. McGaughy
6318 Bay Meadows St.
San Antonio, TX 78244

Meeting on this Scheduled JAN 14, 2021
TDHCA - Per Tommy Calvert, County Comm
Precinct 4

I AM A 94 Years old WW II VETERAN
& HAVE SEEN MANY OF THE 'CANT' WIN
SITUATIONS.

TO: Texas Dept. of HOUSING & COMM. AFFAIRS
ATTN: Teresa Morales
P.O. Box 13941
AUSTIN, TX 78711-3941

Proposed for STRUCTURE - Housing 78 & Walnut
BEXAR COUNTY, TX

I AM 94 yr old WARRIOR VETERAN. I LIVE
IN THE DEVELOPMENT ADJACENT TO YOUR
PROPOSED APARTMENT COMPLEX. IT IS NOT
AN ASSET TO ANYONE IN THIS AREA.
ANOTHER COMPLEX ACROSS HIGHWAY 78 IS
UNDER CONSTRUCTION AT THIS TIME!!

THIS WILL BE A TRAFFIC NIGHTMARE
Hwy 78 IS ALREADY OVERCROWDED. LONG
TRAFFIC LINES - MANY REDLITES & WAITING
AREA HAS ALREADY OUTGROWN ITS
CAPACITY. IF YOU PERMIT THIS
CONSTRUCTION YOU ARE CONTRIBUTING TO
SUB STANDARD LIVING TO A LOT OF
PEOPLE

NEGATIVES

1. TRAVEL TIME TO WORK CENTER AREAS
2. BUSINESSES IN THE AREA
3. "LESS THAN SAVORY" ACTIVITIES IN AREA.
- 4 IT CREATES "MORE OF THE SAME" IN THE VICINITY

OUR CURRENT COMMUNITY IS A VERY WELL MIXED "RACE" + IS A PLEASANT PLACE TO LIVE. THIS WILL BE A MINUS + NOT A PLUS. THE ONLY ADVANTAGE IS FOR THE ORGANIZATION THAT IS BUILDING IT

I BELIEVE VERY STRONGLY THAT THESE \$\$\$ SHOULD BE USED TO RAISE PEOPLE UP, NOT "STORE" THEM IN A GOVT. SUBSIDIZED "APARTMENT IN A NO GOOD JOB ZONE.

W.B.M. Daugh

William B. Mcgaughy
6318 Bay Meadows St
San Antonio, TX 78244

September 19, 2020

Name: Stephen Glover
Address: 7835 Pecan Heights
San Antonio, Texas 78244

Texas Department of Housing and Community Affairs
Attention: Theresa Morales Multifamily Bond Administrator

Reference: Tax application # 20615 -The development of Montagne Apartments

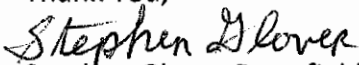
Dear Madam:

We the homeowners of the Brentfield, Mission Hills Estates and Woodlake subdivisions all come together to oppose the building of an apartment complex by Herman and Kittle Properties on F.M. 78 in San Antonio, Texas by presenting these signed petitions.

Even though I understand that this developer was given permission to apply for the tax credit, we strongly oppose Tax Application #20615. By allowing this developer to build on this property adjacent to our residents, the traffic congestion, the possibility of a decline of property values, an increase in crime all present a negative picture for any positive growth.

We all feel that the property would be ideal for retail use. This area could be better served by retail merchants , such as restaurants, stores that would help keep monies in this area instead of having to go elsewhere to enjoy a nice dinner rather than fast foods.

Thank You,



Stephen Glover-Brentfield Homeowner of 21 years

sglover6@yahoo.com

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

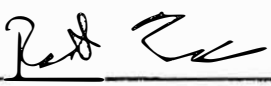
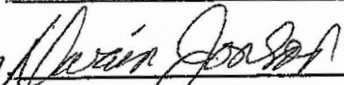
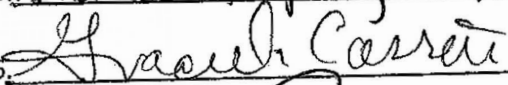

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

Name	Address	Phone or Email
1. Stephen Glover	7835 Pecan Heights	sglover6@yahoo.com
2. Paulette Johnson	7836 Pecan Heights	Spaulette64@yahoo.com
3. David Johnson	7836 Pecan Heights	DavidLou Johnson LDR @gmail.com
4. Alberto X. Garcia	7832 Pecan Heights	albertogarcia@msu.com
5. Noelia M. Garcia	7832 Pecan Heights	umg0511@msu.com
6. James Franklin	7839 Pecan Heights	FRANK19692000@msu.com
7. Telena Franklin	7839 Pecan Heights	FRANK19672000@msu.com
8. Linda L. Glover	7835 Pecan Heights	GloverLindaL@gmail.com
9. Ashraf Hamideli	7807 Pecan Heights	AbuSubhi311@gmail.com
10. Yafa Hamideli	7807 Pecan Heights	yafa.geze@gmail.com
11. Dennis Cromartie	6431 Encanto Point Dr	dcromartie@hotmail.com
12. Ashley Cavazos	6419 Encanto Point Dr.	falloutboy1234@gmail.com
13. Paul Houston	6407 Encanto Point Dr	

120 NAMES

To: Texas Department of Housing and Community Affairs
Opposition to Tax Application #20615—Montague Apartment

	Name	Address	Phone or Email
14.		6335 Encanto Dr	334-8667
15.	Brandi B	6327 Encanto point Dr	210-758-8309
16.	James Babineaux	6316 " " "	210)379-8260
17.		7148 Pecan Hts.	(210)330-6298
18.	Phyllis Jordan	7148 Pecan Hts	(210)344-2296
19.	Stephen Allen	7827 Pecan Heights	(210)3649156
20.	Shamira Allen	7827 Pecan Heights	(361)549-4624
21.	Larry T Flores	7823 Pecan Hts	210-708328
22.	Patricia A Flores	7823 Pecan Heights	210-708-3243
23.	Jema Kamb	7819 Pecan Heights	juarezkramer@gmail.com
24.	Larose Taylor Nelson	7811 Pecan Heights	(210)701-2968
25.	Asnantee Humphrey	7808 Pecan Heights	(956)-624-0041
26.		7812 Pecan Heights	773-742-3113
27.		7812 Pecan Heights	714-920-8787
28.	Consuelo Hernandez	7824 Pecan Heights	210-363-1551
29.	Andrew Hernandez	7824 Pecan Heights	210 36 31922
30.	Alma Aguirre	7844 Pecan heights	713-4805350

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

Dear Board Members:

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	Name	Address	Phone or Email
1.	RONALD WRIGHT	6018 LIMESTONE MILL DR	PROSBRENTFIELDHBA79@GMAIL.COM
2.	LANNELLE WRIGHT	6018 LIMESTONE MILL DR	LANNELLE-KENNEY HILCS@YAHOO.COM
3.	MARK WEST	7918 Encanto Vista	MWESTCL@YAHOO.COM
4.	JESSE ORTIZ	5931 WALNUT MILL DR	FLATTOP5931@YAHOO.COM
5.	STACY ALTHEN	7816 PECAN HEIGHTS	SALTHEN79@GMAIL.COM
6.	PETER ALTHEN	7816 PECAN HEIGHTS	ALTHENPG@GMAIL.COM
7.	DEANN B. DAUBS		
8.	TIERNY WRIGHT	7934 BRONZEROCK DR	TIERNYQW@YAHOO.COM
9.	DE MARIO WRIGHT	7934 BRONZEROCK DR	DEMARIO83@YAHOO.COM
10.	ZAVITA REED	6113 FERRYSAGE DR	ZR2428@GMAIL.COM
11.	TERRI RANGEL	6203 PRONGER POINT DR	TERRISSKZDS@YAHOO.COM
12.	MARTIN RANGEL	6203 PRONGER POINT DR	
13.	DEIDRE COBBINS	7912 ENCANTO VISTA	d.cobbins1@yahoo

To: Texas Department of Housing and Community Affairs
 Opposition to Tax Application #20615—Montague Apartment

	Name	Address	Phone or Email
	Daniel Aguilar	7807 Rio Mist Dr.	DAguILAR5971@yaho
15.	Caru Vallanta	7803 Rio Mist Dr	Caru.VALLANTA@yahbo.com
16.	Michael O'Connor	6031 Limestone Hill Dr	mwocconnors6@gmail.com
17.	SHIRIN R. O'CONNOR	6031 Limestone Hill Dr	shirin.oconnor@gmail.com
18.	Daniel Ortiz	6014 Limestone Hill	Tadano012@gmail.com
19.	Veronica Valenzuela	7823 Rio Mist Dr.	-
20.	Jose Rodela	7827 Rio Mist	-
21.	Dijana Harvey	7819 Rio Mist	-
22.	EVA GUERRA	6208 Encanto Pt	elighthouse1949@yahoo.com
23.	August C Jones	7842 Bypass Shoals	ajones0623@att.net
24.	Nadine Pitts	7927 Pecan Heights	pittsnadine@yahoo.com
25.	Tim Harker	5811 Walnut Mill Dr	hartertjh@gmail.com
26.	KAREN MOORE	5822 Encanto Pt.	Tulsagir150@yahoo.com
27.	RADOVANA NOVOCIC	5819 Encanto Pt.	rnovovic@att.net
28.	Brittina Peña	6220 Encanto Point Dr.	brittingak@gmail.com
29.	Gene Peña	6220 Encanto Point Dr.	-
30.	DAVID TORRES	6111 Secret Springs, SATX	-

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 - The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

	Name	Address	Phone or Email
1.	Robert Staller	6462 FIRESTONE PKWY	realfather1987@yahoo.com
2.	Sraic Stallion	6462 Firestone Parkway	210/427-185
3.	Maria Galan	6454 Firestone Parkway	dgalan5@yahoo.com 210-661-2610
4.	Robert Griffin Jr	" " "	" " "
5.	DJ BROWN	6414 Firestone PKWY	dibroxb6@gmail.com
6.	DONNA M STROUP	6458 FIRESTONE PKWY	Stroup.donna45@gmail.com
7.	Carey Stroup	6458 Firestone PKWY	this is used for sending @gmail.com
8.	Charles Walker	6418 FIRESTONE PKWY	210-666-6935
9.	Alpina Walker	6418 Firestone PKWY	" "
10.	Nestor Barba	6450 Firestone PKWY	2105919309
11.	Hanklin Watter	6410 Firestone PKWY	210-267-1115
12.	Phyllis James	6403 Port Royal	210-323-1661
13.	Fom Clark	6411 Port Royal	210-666-6188

To: Texas Department of Housing and Community Affairs
 Opposition to Tax Application #20615—Montague Apartment

Name	Address	Phone or Email
14. Rudy C. Gonzalez	7840 Pecan Hts SA Tx	Charger2007RGE@gmail.com
15. Roseanne P. Gonzalez	7840 Pecan Hts SA Tx	Mikes5252013@gmail.com
16. Alejandra Rivera	7907 Pecan Hts SATX	7147246683
17. Joaquin Sanchez	7907 Pecan Hts SATX	951 316-8822
18. Betty Richards	7914 Pecan Hts.	210-595-6821
19. Lewis Harris	7914 Pecan Hts	210-595-6821
20. James Cooper	7919 Pecan Hts	760-382-5641
21. Amanda Cooper	7919 Pecan Hts	760-382-5512
22. Ana Richardson	7918 Pecan Hts	210 831 6071
23. Nick Kopp	7922 Pecan Heights	503 453 6675
24. Maria Mandujano	7922 Pecan Heights	↓
25. Lilia Payer	7922 Pecan Heights	↓
26. Benguigo Mandujano	7922 Pecan Heights	
27. Antwan Richards	7914 Pecan Heights	210 595 6821
28. Gloria Abascal	7915 Pecan Heights	210 843 0315
29. Jose Barra	7915 Pecan Hts	- " "
30. Ethen Cooper	7919 Pecan Heights	760-382-0201

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

Name	Address	Phone or Email
1. YOLANDA BEAS	7830 ENCANTO VISTA DR	210-889-4119
2. HOWARD GORDON		CHGORDON@GMAIL.COM
3. SHIRLEY CONQUEST	5807 WALNUT HILL DR	CONQUEST60@AOL.COM
4. MELISSA JONES	7842 BYPASS SHOALS	MELISSA.JONES@TKPSI.COM
5. ALEJANDRA GONZALEZ	7846 BYPASS SHOALS	AYALEON7@GMAIL.COM
6. MAGDALENA HUDSON-MURRAY	7803 BYPASS SHOALS	HUDSONMURRAY@GMAIL.COM
7. TONZ CLEMENTS	6103 SECRET STORES	TONZCLEMENTS75@GMAIL.COM
8. KATHERINE HERBERT	6031 WALNUT HILL	KVHERBERT@GMAIL.COM
9. KELENE WASHINGTON	7818 RIO MIST DR	KELENE.WASHINGTON1012@GMAIL.COM
10. ANGELIS HERNANDEZ	5911 FERRY SAGE DR	ANGELISH0201@GMAIL.COM
11. JESSE ORTIZ	5931 WALNUT HILL DR	FLATTOP5931@YHOO.COM
12.		
13.		

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 –The development of the Montague Apartments

Dear Board Members:

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- | Name | Address | Phone or Email |
|----------------------|----------------------|----------------|
| 1. Flora Brock | 6331 Encanto Pond Dr | 210 954 6405 |
| 2. Kimberly Mitchell | 7626 Rio Vista dr | 210 306-7950 |
| 3. | | |
| 4. | | |
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| 13. | | |

To: Texas Department of Housing and Community Affairs
Opposition to Tax Application #20615—Montague Apartment

	Name	Address	Phone or Email
14.	Bern Garcia	6406 Firestone	710-488-0700
15.	Gerardo Zamora	7418 Pecan Trl	903-704-7122
16.	Fidencio Delgado	6304 Sugar Creek ³⁷²²	210-401-9122
17.	Tiffany Kimm	6406 Firestone	210-336-3855
18.	Lindsey Fawcett	6446 Firestone	210-219-69
19.	Abraham Mejia	6446 Firestone	210-219-7714
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21.			
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August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

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Name	Address	Phone or Email
1. Tamika Lee	7935 Rocky Shoals, S.A., TX 78241	210.771.8028
2. Klady Bolanos DIANA B. DAVIS	7927 ROCKEY SHOALS, S.A. TX 78244	(210) 884-6359
3. Nancy e Jose Escamilla	7934 Rocky Shoals TX 78244	(210) 885-7644
4. Michael Pina	6023 MeadowFawn Dr Converse TX 78109	210875-2007
5. Franklin Reyes	7926 Rockey Shoals TX 78244	(210) 608 3651
6. Kathy Reyes	7926 Rockey Shoals, TX 78244	(210) 612-4549
7. Marco Floras	7922 Rocoy. Shoals, TX 78244	
8. Pedro Pedro Chang	7911 Rocky Shoals SA TX 78244	Pedrochang@msn.com
9. Natalie Castro	7914 Rocky Shs SA, TX 78244	
10. Frank Llederon Pinare		(210)
11. Alex Phillips	7902 Rocky Shoals SA TX 78244	718-338
12.		
13.		

June 4, 2020

ATTN: TDHCA Board of Directors, Members of the TDHCA Board

Reference: Development/Application #20615, Herman & Kittle Properties- Montage Apartments

CONEN is absolutely opposed to this proposed development. CONEN (Coalition of Northeast Neighborhoods) is a community group representing 8,427 homes in Northeast Bexar County. At least half of our communities will be impacted by this development.

For starters Herman & Kittle Properties has hedged this process for nearly a year now and their actions, conduct and behavior are becoming seemingly harrasing in nature!

In September 2019 there was a community meeting held by Pct. 4 Bexar County Commissioner Tommy Calvert attended by approximately 130 community members at which Herman & Kittle was met with unquestionable resistance to this proposed development.

In November 2019 Herman & Kittle Properties WITHDREW their PREVIOUS application with TDHCA the week prior to the hearing.

Now comes January 2020, Herman & Kittle resurfaces AGAIN with Commissioner Calvert's office. They were instructed by the commissioner to reconnect/communicate with the communities. That NEVER HAPPENED!!!

What is so baffling is that Herman & Kittle Properties want so much to build in this area, but they feel no obligation, moral or otherwise, to communicate with their potential neighbors?

In CONEN's previous objections there were numerous issues cited relevant to the Texas Property Code: the peaceful enjoyment of property and decimation of property values! This is very serious and one would hope that TDHCA would NOT grant permission/funding to a project that violates the Texas Property Code.

There were crime concerns, enormous traffic concerns, school capacities, etc.

As we sit here today, our Pct. 4 County Commissioner doesn't even have all the answers on this project. So that should tell you where the residents are on the actual details about this project.

As for Herman & Kittle Properties, Inc. themselves they can't make up their minds- they have gone from their original proposal last fall, to a "market rate" complex to whatever now. They have a D – (minus) rating with the BBB with no business record in San Antonio! This company has no credibility, integrity and now is proving to be extremely unreliable. This is the culmination of harrassment!

CONEN is respectfully requesting the TDHCA board deny the development application #20615 by Herman & Kittle Properties, Inc. on the Montage Apartments! We certainly wouldn't want to see TDHCA bcome complicit in potential violations of the Texas Property Code!

Other alternatives would be postponement and directing Herman & Kittle back to the impacted communities like County Commissioner Calvert did earlier this year.

CONEN certainly understands the urgent need for affordable housing! However, there are some places where it is just not the right fit! This is one of those cases.

If these tenants are placed in a place they are not wanted so be it! Another point to be understood is why Herman & Kittle insists on putting their prospective tenants in such a situation?

Sincerely,

Lisa M. Pfeiffer
Vice-Chair, CONEN
(210) 595-8754

June 2, 2020,

Name: Stephen Glover
Address: 7835 Pecan Heights
San Antonio, Texas 78244

Texas Department of Housing and Community Affairs Board Members
Attention: Ms. Sharon Thomason

Reference: Tax application # 20615 -The development of Montagne Apartments

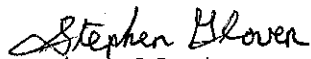
Dear Madam:

I am writing this letter of opposition to the Tax Application 20615. I am oppose to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road.

Even though I understand that this developer removed their application earlier for tax credits consideration by the state, the purpose of this letter is to still oppose any future efforts to bring forward a new application. By allowing this developer to build on this property adjacent to our neighborhood, the traffic congestion, the possibility of a decline of property values, an increase in crime all present a negative picture for any positive growth.

I feel that both properties would be ideal for retail use. This area could be better served by retail merchants , such as restaurants, stores that would help keep monies in this area instead of having to go elsewhere to enjoy a nice dinner rather than fast foods.

Thank You,


sglover6@yahoo.com

From: lmaranto@aol.com
To: [Teresa Morales](#)
Subject: Herman and Kittle Proposed Apartment Development
Date: Tuesday, June 2, 2020 4:42:46 PM

To Teresa Morales:

I want to express my strong disapproval for the subject apartment development planned at the intersection of Walzem Road and FM 78 in Bexar County, Texas.

I live in the neighborhood next to the proposed site. It should definitely not be financed through the Housing Tax Credits-Non Competitive 4% and TDHCA Tax Exempt Bonds.

The traffic at that intersection is horrible and cannot sustain more of it. It is already an unsafe intersection with far too many accidents.

Furthermore, the Judson Independent School District is currently overcrowded. The additional students from the proposed apartment complex would have a very negative impact on an already overcrowded school district.

Additionally, and most importantly the apartment complex would not be compatible or congruous to the single family homes in the surrounding neighborhoods.

Your support in disapproving the Herman and Kittle funding request would be greatly appreciated by all who currently live in the area.

Sincerely,

Leonard J. Maranto
7307 Sawgrass
San Antonio, Tx. 78244

Name: Irma Kramer
Address: 7819 Pecan Heights
San Antonio, Tx. 78244

Re: Tax application #20615: development of Montagne Apartments
Attn: Theresa Morales Multifamily Bond Administrator
Texas Department of Housing and Community Affairs

Dear Madame,

The purpose of this letter is to voice opposition to the future Herman and Kittle apartments at the intersection of Walzem Road and FM 78.

My property butts up right behind the proposed development, and as a single woman and senior citizen I am extremely concerned with my safety and privacy.

It is not uncommon for violence and disorderly behavior to be prevalent in these units so security becomes a prominent issue. Providing safety measures like video surveillance, 24 hour security or visitor screening do not always mitigate the high crime rates of public housing.

There is also the potential fear that residents could be ex-convicts or other undesirable sorts who will impact the quality of life of their neighbors.

I appreciate anything that can be done on behalf of the community in this neighborhood.

Respectfully submitted.

From: [Elena Peinado](#)
To: [Teresa Morales](#)
Cc: [Jonathan Galvan](#); [Shannon Roth](#)
Subject: FW: Montage Apartment (Development #20615)
Date: Thursday, October 29, 2020 3:26:12 PM

Teresa,

Another email regarding Montage Apartment. Since you were not included in this one, am forwarding and ccing Jonathan and Shannon.

-----Original Message-----

From: Brian Murray <bmurray78244@gmail.com>
Sent: Thursday, October 29, 2020 3:21 PM
To: Elena Peinado <elena.peinado@tdhca.state.tx.us>
Cc: tc@bexar.org
Subject: Montage Apartment (Development #20615)

Request you disapprove the applications pertaining to the development of affordable rental housing in our community. We, (As single family homeowners) have had several meetings to discuss this proposal with the Montage Apartment developer and Councilman Tommy Calvert to vehemently oppose this affordable rental housing in the proposed location fo some of the following reasons:

A) We are in a 200-300k single home golf-course community just South of the proposed building site. If approved, property values of our homes will plummet significantly below market value. We've even suggested other locations within several miles further South on 78 in an area with more commensurate home values.

B) The Walzem Rd, FM 78 Intersection already has an over abundance of traffic during morning and especially afternoon rush hours due to new developments in the area. A traffic study needs to be accomplished in this area. (Currently an apartment complex is going up on Walzem Rd behind the Randolph Brooks Federal Credit Union across the street from the proposed location which will already exacerbate this situation)

C) An overcrowding of our schools in the Judson ISD System, along with inadequate Sheriff, Police and Fire protection for the 2 additional apartment rental complexes on the 2 corners. (If built 3 stories, Fire Dept would need a hook and ladder to reach)

Respectfully request the members of the Texas Department of Housing and Community Affairs governing board disapprove the two finance applications for this affordable rental housing in this location.

Brian P. Murray
7315 Sawgrass
San Antonio, TX, 78244

Sent from my iPad

Sent from my iPad

From: [Brenda Minor](#)
To: [Teresa Morales](#)
Subject: Application for Apartments by Herman and Kittle Proposed to be Built at Walzem Road and FM 78
Date: Thursday, June 11, 2020 2:05:08 PM

JUNE 11, 2020

Texas Dept. of Housing and Community Affairs
Public Comment--Multifamily Finance Division
P.O. Box 13941
Austin, TX 78711-3941
Phone 512-475-3800 (main office)
Fax. 512-475-0764

Teresa Morales, Multifamily Bond Administrator
512-475-3344
Email: teresa.morales@tdhca.state.tx.us

ATTN: TDHCA Board of Directors Members of the TDHCA Board

Ms. Leslie Bingham, Vice Chair **Ms. Sharon Thompson**
Mr. Paul A Braden **Mr. Lee Vasquez**

Governor Greg Abbott
Office of Governor
P.O. Box 12428
512-463-2000

**Re: Application for Apartments by Herman and Kittle Proposed to be Built at
Walzem Road and FM 78**

From: Brenda J. Minor

Ventura I Subdivision Resident

7554 Lincoln Village Dr.

San Antonio. TX. 78244-1517

Email brenearn@sbcglobal.net

210-601-0330

I am writing to inform you that "I OPPOSE" the proposed plan of " Herman Kittle" to build the Apartments in said location due to insufficient infrastructure. It does not support this type of housing.

Sincerely,

Brenda J. Minor

From: bcarter47@att.net
To: [Teresa Morales](#)
Subject: No more multi-housing - our area has enough of what it brings
Date: Saturday, June 6, 2020 3:30:55 PM

Ms. Morales,

My husband and I are in our 70's; we have owned our home in Spring Meadows for 30+ years. We used to feel safe in the neighborhood, but then Hurricane Katrina came along and all the people evacuated moved into the mall on Walzem and the trouble began. They had to find a permanent place to live and the county made affordable (section 9) housing available. Most didn't have nor did they want jobs. The crime steadily climbed in the area. Young people wandered around at all hours and vandalized places where they broke in and had already stolen everything worth stealing. Home break-ins became common place. People of my age no longer walked in their neighborhoods and definitely didn't go out after dark. We only have Bexar county to protect us and they are spread thin. New houses are going up by the minute and they are no-down, low payment, no credit check. People who are moving in have no pride in homeownership. We have homes with trampolines, cars, inflatable two-story water slides, bbq grills, etc. are stored in front yards. We should have moved out long ago, but now we are too old to make another move. But, we are armed in case of a home invasion. Just in case. Please please no more low cost housing in our area of town. Wal-Marts are robbed in our area. Please we do not want to live in another ghetto. The Glen is just around the corner and that's too close. Take your apartment complexes to the other side of San Antonio; we already have enough trash.

In case you think we are ignorant residents – we are both retired Air Force and hold Master's degrees.

Sincerely,
Brenda K. Carter

June 5, 2020

Albert & Noelia Garcia

7832 Pecan Heights

San Antonio TRX 78244

Texas Department of Housing and Community Affairs

Attention: Theresa Morales Multifamily Bond Administrator

Reference: Tax application # 20615- The development of Montagne Apartments

Dear Madam:

I am writing this letter of opposition to the Tax Application # 20615. I am opposing to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold's Gym on FM 78 near the dangerous intersection near Walzem Road.

Even though I understand that this developer removed their application earlier for tax credits considerate by the state, the purpose of this letter is to still oppose any future efforts to bring forward a new application. By allowing this developer to build on this property adjacent to our neighborhood, the traffic congestion, the possibility of a decline of property value, and increase in crime all presents a negative picture for any positive growth.

I feel that the property would be ideal for retail use. This area could be better served by retail merchants, such as restaurants, stores that would help keep monies in this area instead of having to go elsewhere to enjoy a nice dinner rather than fast foods.

Thank you

Albert Garcia

Albert Garcia

September 19, 2020

Name: Stephen Glover
Address: 7835 Pecan Heights
San Antonio, Texas 78244

Texas Department of Housing and Community Affairs
Attention: Theresa Morales Multifamily Bond Administrator

Reference: Tax application # 20615 -The development of Montagne Apartments

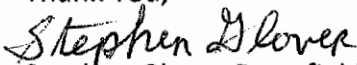
Dear Madam:

We the homeowners of the Brentfield, Mission Hills Estates and Woodlake subdivisions all come together to oppose the building of an apartment complex by Herman and Kittle Properties on F.M. 78 in San Antonio, Texas by presenting these signed petitions.

Even though I understand that this developer was given permission to apply for the tax credit, we strongly oppose Tax Application #20615. By allowing this developer to build on this property adjacent to our residents, the traffic congestion, the possibility of a decline of property values, an increase in crime all present a negative picture for any positive growth.

We all feel that the property would be ideal for retail use. This area could be better served by retail merchants , such as restaurants, stores that would help keep monies in this area instead of having to go elsewhere to enjoy a nice dinner rather than fast foods.

Thank You,



Stephen Glover-Brentfield Homeowner of 21 years

sglover6@yahoo.com

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

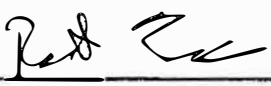

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

Name	Address	Phone or Email
1. Stephen Glover	7835 Pecan Heights	sglover6@yahoo.com
2. Paulette Johnson	7836 Pecan Heights	Spaulette64@yahoo.com
3. David Johnson	7836 Pecan Heights	DavidLou Johnson LDR @gmail.com
4. Alberto X. Garcia	7832 Pecan Heights	albertogarcia@msu.com
5. Noelia M. Garcia	7832 Pecan Heights	umg0511@msu.com
6. James Franklin	7839 Pecan Heights	FRANK19692000@msu.com
7. Telena Franklin	7839 Pecan Heights	FRANK19672000@msu.com
8. Linda L. Glover	7835 Pecan Heights	GloverLindaL@gmail.com
9. Ashraf Hamideli	7807 Pecan Heights	AbuSubhi311@gmail.com
10. Yafa Hamideli	7807 Pecan Heights	yafageze@gmail.com
11. Dennis Cromartie	6431 Encanto Point Dr	dcromartie@hotmail.com
12. Ashley Cavazos	6419 Encanto Point Dr.	falloutboy1234@gmail.com
13. Paul Houston	6407 Encanto Point Dr	

120 NAMES

To: Texas Department of Housing and Community Affairs
Opposition to Tax Application #20615—Montague Apartment

	Name	Address	Phone or Email
14.		6335 Encanto Dr	334-8667
15.	Brandi B	6327 Encanto point Dr	210-758-8309
16.	James Babineaux	6316 " " "	210)379-8260
17.	Alvin Jordan	7148 Pecan Hts.	(210)330-6298
18.	Phyllis Jordan	7148 Pecan Hts	(210)344-2296
19.	Stephen Allen	7827 Pecan Heights	(210)3649156
20.	Shamira Allen	7827 Pecan Heights	(361)549-4624
21.	Larry T Flores	7823 Pecan Hts	210-708328
22.	Patricia A Flores	7823 Pecan Heights	210-708-3243
23.	Jema Kamer	7819 Pecan Heights	juarezkramer@gmail
24.	Larose Taylor Nelson	7811 Pecan Heights	(210)701-2968
25.	Asnantee Humphrey	7808 Pecan Heights	(956)-624-0041
26.	Graciela Carreri	7812 Pecan Heights	773-742-3113
27.		7812 Pecan Heights	714-920-888
28.	Consuelo Hernandez	7824 Pecan Heights	210-363-1551
29.	Andrew Hernandez	7824 Pecan Heights	2103631922
30.	Alma Aguirre	7844 Pecan heights	713-4805350

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

	Name	Address	Phone or Email
1.	RONALD WRIGHT	6018 LIMESTONE MILL DR	PHOSBRENTFIELDHBA79@GMAIL.COM
2.	LANNELLE WRIGHT	6018 LIMESTONE MILL DR	LANNELLE-KENNEY HILCS@YAHOO.COM
3.	MARK WEST	7918 Encanto Vista	MWESTCL@YAHOO.COM
4.	JESSE ORTIZ	5931 WALNUT MILL DR	FLATTOP5931@YAHOO.COM
5.	STACY ALTHEN	7816 PECAN HEIGHTS	SALTHEN79@GMAIL.COM
6.	PETER ALTHEN	7816 PECAN HEIGHTS	ALTHENPG@GMAIL.COM
7.	DEANN B. DAUBS		
8.	TIERNY WRIGHT	7934 BRONZEROCK DR	TIERNYQW@YAHOO.COM
9.	DE MARIO WRIGHT	7934 BRONZEROCK DR	DEMARIO83@YAHOO.COM
10.	ZAVITA REED	6113 FERRYSAGE DR	ZR2428@GMAIL.COM
11.	TERRI RANGEL	6203 PRONGER POINT DR	TERRISSKZDS@YAHOO.COM
12.	MARTIN RANGEL	6203 PRONGER POINT DR	
13.	DEIDRE COBBINS	7918 ENCANTO VISTA	d.cobbins1@yahoo

To: Texas Department of Housing and Community Affairs
 Opposition to Tax Application #20615—Montague Apartment

	Name	Address	Phone or Email
	Daniel Aguilar	7807 Rio Mist Dr.	DAguILAR5971@yaho
15.	Caru H Vallanta	7803 Rio Mist Dr	Caru.VALLANTA@yahbo.com
16.	Michael O'Connor	6031 Limestone Hill Dr	mwocconnors6@gmail.com
17.	SHIRIN R. O'CONNOR	6031 Limestone Hill Dr	shirin.oconnor@gmail.com
18.	Daniel Ortiz	6014 Limestone Hill	Tadano012@gmail.com
19.	Veronica Valenzuela	7823 Rio Mist Dr.	-
20.	Jose Rodela	7827 Rio Mist	-
21.	Dijana Harvey	7819 Rio Mist	-
22.	EVA GUERRA	6208 Encanto Pt	elighthouse1949@yahoo.com
23.	August C Jones	7842 Bypass Shoals	ajones0623@att.net
24.	Nadine Pitts	7927 Pecan Heights	pittsnadine@yahoo.com
25.	Tim Harker	5811 Walnut Mill Dr	hartertjh@gmail.com
26.	KAREN MOORE	5822 Encanto Pt.	Tulsagir150@yahoo.com
27.	RADOVANA NOVOCIC	5819 Encanto Pt.	rnovovic@yahoo.com
28.	Brittina Peña	6220 Encanto Point Dr.	brittina@yahoo.com
29.	Gene Peña	6220 Encanto Point Dr.	-
30.	DAVID TORRES	6111 Secret Springs, SATX	-

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 - The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

	Name	Address	Phone or Email
1.	Robert Staller	6462 FIRESTONE PKWY	realfather1987@yahoo.com
2.	Sraic Stallion	6462 Firestone Parkway	210/427-185
3.	Maria Galan	6454 Firestone Parkway	dgalan5@yahoo.com 210-661-2610
4.	Robert Griffin Jr	" " "	" " "
5.	DJ BROWN	6414 Firestone PKWY	dibroxb6@gmail.com
6.	DONNA M STROUP	6458 FIRESTONE PKWY	Stroup.donna43@gmail
7.	Carey Stroup	6458 Firestone PKWY	this is used for sending @gmail.com
8.	Charles Walker	6418 FIRESTONE PKWY	210-666-6935
9.	Alpina Walker	6418 Firestone PKWY	" "
10.	Nestor Barba	6450 Firestone PKWY	2105919309
11.	Hanklin Watter	6410 Firestone PKWY	210-267-1115
12.	Phyllis James	6403 Port Royal	210-323-1661
13.	Fom Clark	6411 Port Royal	210-666-6188

To: Texas Department of Housing and Community Affairs
Opposition to Tax Application #20615—Montague Apartment

Name	Address	Phone or Email
14. Rudy C. Gonzalez	7840 Pecan Hts SA. Tx	Charger2007RGE@gmail.com
15. Roseanne P. Gonzalez	7840 Pecan Hts SA Tx	Mikes5252013@gmail.com
16. Alejandra Rivera	7907 Pecan Hts SATX	7147246683
17. Joaquin Sanchez	7907 Pecan Hts SATX	951 316-8822
18. Betty Richards	7914 Pecan Hts.	210-595-6821
19. Lewis Harris	7914 Pecan Hts	210-595-6821
20. James Cooper	7919 Pecan Hts	760-382-5641
21. Amanda Cooper	7919 Pecan Hgt	760-382-5512
22. Ana Richardson	7918 Pecan Hts	210 831 6071
23. Nick Kopp	7922 Pecan Heights	503 453 6675
24. Maria Mandujano	7922 Pecan Heights	↓
25. Lilia Payerl	7922 Pecan Heights	↓
26. Benigno Mandujano	7922 Pecan Heights	
27. Antwan Richards	7914 Pecan Heights	210 595 6821
28. Gloria Abascal	7915 Pecan Heights	210 843 0315
29. Jose Barra	7915 Pecan Hts	- " "
30. Ethan Cooper	7919 Pecan Heights	760-382-0201

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

Name	Address	Phone or Email
1. YOLANDA BEAS	7830 ENCANTO VISTA DR	210-889-4119
2. HOWARD GORDON		CHGORDON@GMAIL.COM
3. SHIRLEY CONQUEST	5807 WALNUT HILL DR	CONQUEST60@AOL.COM
4. MELISSA JONES	7842 BYPASS SHOALS	MELISSA.JONES@TKPSI.COM
5. ALEJANDRA GONZALEZ	7846 BYPASS SHOALS	AYALEON7@GMAIL.COM
6. MAGDALENA HUDSON-MURRAY	7803 BYPASS SHOALS	HUDSONMURRAY@GMAIL.COM
7. TONZ CLEMENTS	6103 SECRET STORES	TONZCLEMENTS75@GMAIL.COM
8. KATHERINE HERBERT	6031 WALNUT HILL	KVHERBERT@GMAIL.COM
9. KELENE WASHINGTON	7818 RIO MIST DR	KELENE.WASHINGTON1012@GMAIL.COM
10. ANGELIS HERNANDEZ	5911 FERRY SAGE DR	ANGELISH0201@GMAIL.COM
11. JESSE ORTIZ	5931 WALNUT HILL DR	FLATTOP5931@YAHOO.COM
12.		
13.		

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 –The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

- | Name | Address | Phone or Email |
|----------------------|----------------------|----------------|
| 1. Flora Brock | 6331 Encanto Pond Dr | 210 954 6405 |
| 2. Kimberly Mitchell | 7626 Rio Vista dr | 210 306-7950 |
| 3. | | |
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| 12. | | |
| 13. | | |

To: Texas Department of Housing and Community Affairs
Opposition to Tax Application #20615—Montague Apartment

	Name	Address	Phone or Email
14.	Bern Garcia	6406 Firestone	710-488-0700
15.	Gerardo Zamora	7418 Pecan Trl	903-704-7122
16.	Fidencio Delgado	6304 Sugar Creek ³⁷²²	210-401-9122
17.	Tiffany Kimm	6406 Firestone	210-336-3855
18.	Lindsey Fawcett	6446 Firestone	210-219-69
19.	Abraham Mejia	6446 Firestone	210-219-7714
20.			
21.			
22.			
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26.			
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30.			

August 29th, 2020

To: Texas Department of Housing and Community Affairs
Attention: All Board Members

Reference: Tax Application #20615 -The development of the Montague Apartments

Dear Board Members:

We the residents/homeowners of the Brentfield subdivision, the Mission Estates subdivision and the Woodlake subdivision are in opposition to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road. We are in opposition because of the traffic congestion, a possibly increase in crime and a decline in our property values in these subdivisions that will surround this project. All present a negative picture for any positive growth.

Name	Address	Phone or Email
1. Tamika Lee	7935 Rocky Shoals, S.A., TX 78241	210.771.8028
2. Klady Bullock DIANA B. DAVIS	7927 ROCKEY SHOALS, S.A. TX 78244	(210) 884-6359
3. Nancy & Jose Escamilla	7934 Rocky Shoals TX 78244	(210) 885-7644
4. Michael Pina	6023 MeadowFawn Dr Converse TX 78109	210 875-2007
5. Franklin Reyes	7926 Rocky Shoals TX 78244	(210) 608 3651
6. Kathy Reyes	7926 Rocky Shoals, TX 78244	(210) 612-4549
7. Marco Floras	7922 Rocoy. Shoals, TX 78244	
8. Pedro Pedro Chang	7911 Rocky Shoals SA TX 78244	Pedrochang@msn.com
9. Natalie Castro	7914 Rocky Shs SA, TX 78244	
10. Frank Llederon Pinare		(210)
11. Alex Phillips	7902 Rocky Shoals SA TX 78244	718-338
12.		
13.		

June 4, 2020

ATTN: TDHCA Board of Directors, Members of the TDHCA Board

Reference: Development/Application #20615, Herman & Kittle Properties- Montage Apartments

CONEN is absolutely opposed to this proposed development. CONEN (Coalition of Northeast Neighborhoods) is a community group representing 8,427 homes in Northeast Bexar County. At least half of our communities will be impacted by this development.

For starters Herman & Kittle Properties has hedged this process for nearly a year now and their actions, conduct and behavior are becoming seemingly harrasing in nature!

In September 2019 there was a community meeting held by Pct. 4 Bexar County Commissioner Tommy Calvert attended by approximately 130 community members at which Herman & Kittle was met with unquestionable resistance to this proposed development.

In November 2019 Herman & Kittle Properties WITHDREW their PREVIOUS application with TDHCA the week prior to the hearing.

Now comes January 2020, Herman & Kittle resurfaces AGAIN with Commissioner Calvert's office. They were instructed by the commissioner to reconnect/communicate with the communities. That NEVER HAPPENED!!!

What is so baffling is that Herman & Kittle Properties want so much to build in this area, but they feel no obligation, moral or otherwise, to communicate with their potential neighbors?

In CONEN's previous objections there were numerous issues cited relevant to the Texas Property Code: the peaceful enjoyment of property and decimation of property values! This is very serious and one would hope that TDHCA would NOT grant permission/funding to a project that violates the Texas Property Code.

There were crime concerns, enormous traffic concerns, school capacities, etc.

As we sit here today, our Pct. 4 County Commissioner doesn't even have all the answers on this project. So that should tell you where the residents are on the actual details about this project.

As for Herman & Kittle Properties, Inc. themselves they can't make up their minds- they have gone from their original proposal last fall, to a "market rate" complex to whatever now. They have a D – (minus) rating with the BBB with no business record in San Antonio! This company has no credibility, integrity and now is proving to be extremely unreliable. This is the culmination of harrassment!

CONEN is respectfully requesting the TDHCA board deny the development application #20615 by Herman & Kittle Properties, Inc. on the Montage Apartments! We certainly wouldn't want to see TDHCA bcome complicit in potential violations of the Texas Property Code!

Other alternatives would be postponement and directing Herman & Kittle back to the impacted communities like County Commissioner Calvert did earlier this year.

CONEN certainly understands the urgent need for affordable housing! However, there are some places where it is just not the right fit! This is one of those cases.

If these tenants are placed in a place they are not wanted so be it! Another point to be understood is why Herman & Kittle insists on putting their prospective tenants in such a situation?

Sincerely,

Lisa M. Pfeiffer
Vice-Chair, CONEN
(210) 595-8754

January 4, 2021

TO: Texas Department of Housing and Community Affairs (TDHCA)

FROM: CONEN (Coalition of North East Neighborhoods)

Reference: Herman & Kittle Properties Application #20615

CONEN is **STRONGLY OPPOSED** to the application being pursued by Herman & Kittle Properties. CONEN is a group of 12 communities in NE San Antonio & Bexar County. Our combined efforts include over 8,400 households and their community concerns. The proposed development by Herman & Kittle Properties being a significant concern!

This process has gone on nearly 18 months and is to the point of harrassment! From June 2019 through Sep 2019 Herman & Kittle Properties was attempting to gain support from the adjoining communities. They got fierce opposition instead. **THIS MUST BE NOTED:** Herman & Kittle Properties pulled their initial application in Nov. 2019! Now, here we go again!

Part of the TDHCA mission is promoting and preserving home ownership. That is a critical part of this process. Consistent with that mission TDHCA should have already received petitions with 350+ signatures **OPPOSING** the Herman & Kittle Properties application for development. I must also tell you this is not a typical "NIMBY" (Not In My Back Yard) situation. There are **REAL ISSUES** by property owners and their voices/concerns **MUST** be heard by TDHCA!

- 1- Clearly high potential for existing property owners rights to be violated under the Texas Property Code.
- 2- Potential for future legal action is **HIGH!**
- 3- Significant potential for decreases/negative impact of existing homeowners property values.
- 4- Significant negative impact on public safety in the area as well as crime. The Bexar County Sheriff's Office (BCSO) Command Post has had to be established twice in the last 6 months within a ¼ mile of this proposed development location.
- 5- This corridor of FM 78 has been a "Hot Zone" for crime to include murders for the last 4 years. As recently as about 6 months ago there was a fight and a shooting in an adjoining parking lot. Had the Montage been standing at that time the bullets would have entered the apartments. WE as community minded residents have concern for all, even potential occupants of this proposed development.
- 6- With an environment such as this people may move in but will they stay? Turnover/stability?
- 7- Traffic concerns to include school bus safety with one in/out. Traffic is already terribly congested and in need of relief, not more added to it. Accidents are also very prevalent in this area.
- 8- FM.78 is primarily a mix of business and individual properties within communities. About a half mile down the road there is one apartment complex primarily for military families (low risk).
- 9- No information exists on the impact of school capacities- did Herman & Kittle avoid them too?
- 10- Still no answer to the issue of Section 8 housing. They say no, but we can't trust them.

Now, let's talk about Herman & Kittle Properties.

- 1- BBB- rates them at a D-!
- 2- Herman & Kittle Properties has no history in San Antonio.
- 3- When the going gets tough, they run to re-surface later.
- 4- Deceptive, untrustworthy and pathetic. Don't care about others!
- 5- We had a Zoom meeting on August 25, 2020 and there were several serious issues they were supposed to come back to the Commissioner about and never heard from them again. Those issues

were related to drainage & retention pond, flood management, towing, de-celeration lane for entry and a maintenance plan- NOTHING!!!! Herman & Kittle went quiet!!! These are some serious and concerning issues.

6- Herman & Kittle Properties would be a PISS POOR neighbor to have!

TDHCA needs to DENY the application of Herman & Kittle Properties. We do understand the need for affordable housing, but this is not the right location

A denial would give our elected leader, Commissioner Tommy Calvert, Bexar County Pct. 4, the opportunity to do an Economic Development Tour to get community input on entities that would enhance our area and be welcomed by existing residents. The residents in close proximity to the proposed development site have been there nearly 25-30 years let them continue to live peacefully in their existing homes/communities.

Respectfully Submitted,



Lisa M. Pfeiffer
Vice-Chair, CONEN
9106 Wind Terrace
San Antonio, Texas 78239
(210) 595-8754

June 2, 2020,

Name: Stephen Glover
Address: 7835 Pecan Heights
San Antonio, Texas 78244

Texas Department of Housing and Community Affairs Board
Attention: Theresa Morales, Multifamily Bond Administrator

Reference: Tax application # 20615 -The development of Montagne Apartments

Dear Madam:

I am writing this letter of opposition to the Tax Application 20615. I am oppose to all multifamily apartments erection by Herman and Kittle in the vacant site adjacent to Gold Gym on F.M. 78 near the dangerous intersection near Walzem road.

Even though I understand that this developer removed their application earlier for tax credits consideration by the state, the purpose of this letter is to still oppose any future efforts to bring forward a new application. By allowing this developer to build on this property adjacent to our neighborhood, the traffic congestion, the possibility of a decline of property values, an increase in crime all present a negative picture for any positive growth.

I feel that both properties would be ideal for retail use. This area could be better served by retail merchants , such as restaurants, stores that would help keep monies in this area instead of having to go elsewhere to enjoy a nice dinner rather than fast foods.

Thank You,

sglover6@yahoo.com

7c

BOARD ACTION REQUEST

BOND FINANCE DIVISION

JANUARY 14, 2021

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Oso Bay Apartments) Series 2021 Resolution No. 21-010, and a Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted an inducement resolution for the Oso Bay Apartments at the Board meeting of July 23, 2020;

WHEREAS, an application for Oso Bay Apartments requesting 4% Housing Tax Credits, sponsored by Oso Bay Housing Management, LLC, and Commonwealth Multifamily Housing Corporation was submitted to the Department on September 16, 2020;

WHEREAS, a Certification of Reservation was issued in the amount of \$14,000,000 on September 16, 2020, with a bond delivery deadline of March 15, 2021;

WHEREAS, in accordance with 10 TAC §1.301(f), the compliance history is designated as a Category 1 and was deemed acceptable without further review or discussion by the Executive Award and Review Advisory Committee (EARAC) as stated herein; and

WHEREAS, EARAC recommends approval of the issuance of Multifamily Housing Revenue Bonds (Series 2021) for Oso Bay Apartments and the issuance of a Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of tax-exempt Multifamily Housing Revenue Bonds (Oso Bay Apartments) Series 2021 in an amount not to exceed \$14,000,000, Resolution No. 21-010, is hereby approved in the form presented to this meeting;

FURTHER RESOLVED, the issuance of a Determination Notice of \$869,817 in 4% Housing Tax Credits for the Oso Bay Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Tex. Gov't Code §2306.353 *et seq.*, which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Development Information: The Oso Bay Apartments are to be located at 7502 McArdle Road in Corpus Christi, Nueces County, and proposes the acquisition and rehabilitation of 104 units that will continue to serve the general population. The Certificate of Reservation from the Bond Review Board was issued under the Priority 2 designation, which requires that 80% of the units within the development have rents restricted to 60% of Area Median Family Income (AMFI). While only 80% of the units must be rent restricted according to the priority designation, the application reflects all 104 of the units will be rent and income restricted at 60% AMFI.

Organizational Structure and Previous Participation: The Borrower is Oso Bay Apartments, LLC, and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 1 and was deemed acceptable, without further review or discussion, by EARAC.

Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing/Public Comment: In light of COVID-19 and the inability for an in-person TEFRA hearing to be held, staff conducted a telephonic hearing, in accordance with IRS guidance, for the proposed development on December 3, 2020. Given that it was via telephone, it was difficult to discern exactly how many individuals participated in the hearing. However, representatives from the Department and the Developer were present, and no public comment was made. A copy of the hearing transcript is included herein. The Department has received no letters of support or opposition for the proposed development.

Summary of Financial Structure

This transaction involves an FHA 221(d)(4) loan originated and underwritten by Regions Bank, which mirrors the financing structure used by several bond transactions previously approved by the Board. Under the proposed structure, the Department will issue short-term tax-exempt fixed rate bonds in an amount not to exceed \$14,000,000 that will be initially publically offered. As bond proceeds are drawn down, the proceeds from the FHA loan will simultaneously be drawn and placed in the Collateral Fund such that the bonds will be fully cash-collateralized throughout the construction period. Regions Bank will also provide a construction bridge loan in the amount of \$4,500,000 that will carry an interest rate equal to the 30-day LIBOR plus 300 bps. The bridge loan will be interest-only, have a maximum term of 24 months, and be completely paid down upon construction completion.

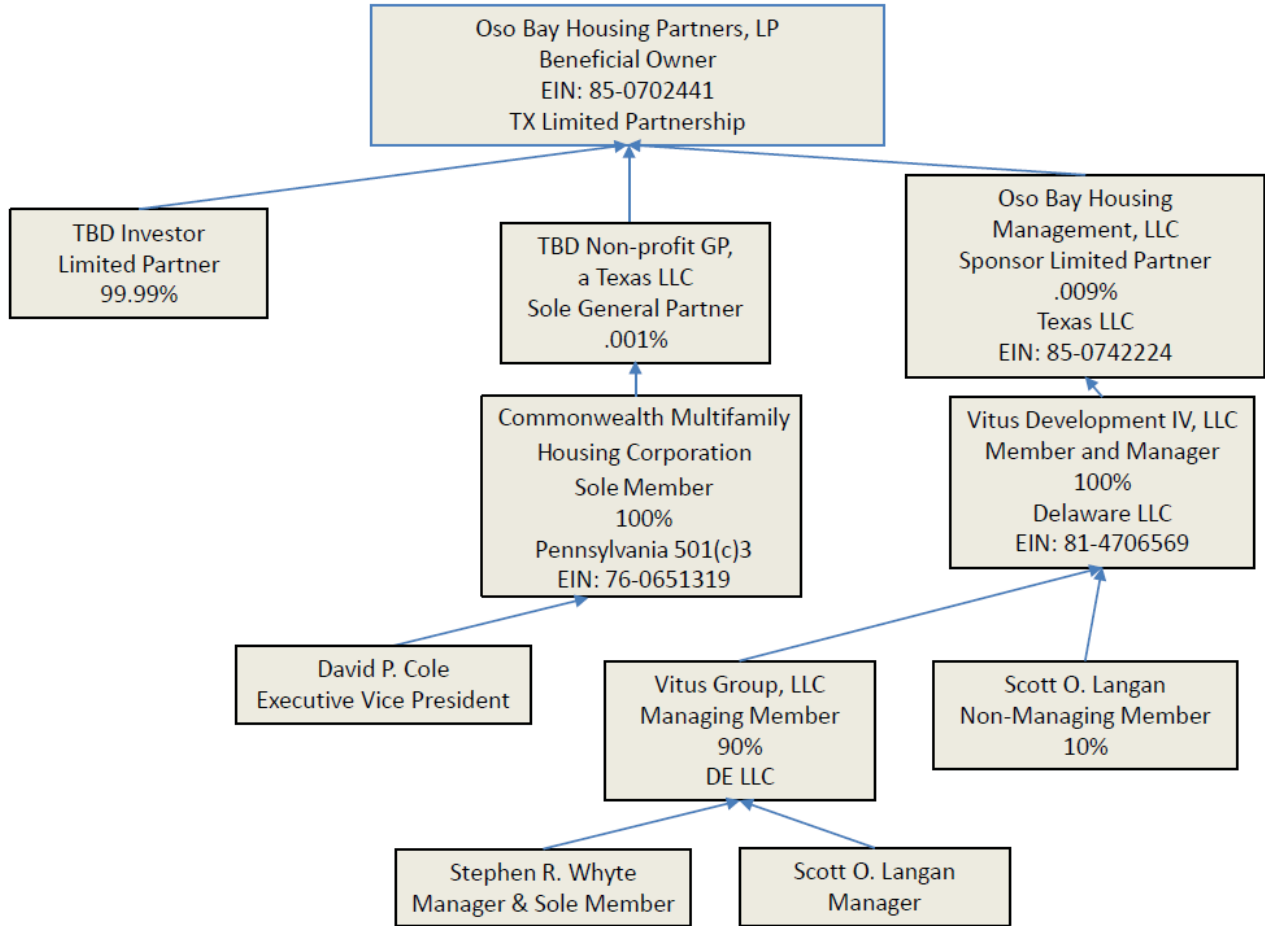
The bond mortgage will be subordinate in lien position to the FHA mortgage, but as previously indicated, the bond proceeds will also be cash collateralized as long as the bonds are outstanding. The

bonds will remain outstanding through the rehabilitation period, estimated to be between 10-12 months, and upon completion, will then be redeemed in full using the funds on deposit in the Collateral Fund. The bonds will carry an interest rate not to exceed 2.50% and an initial mandatory tender date of September 1, 2022, at which time the bonds can be redeemed or remarketed until the final maturity date of September 1, 2024. Upon redemption of the bonds, the FHA mortgage loan will remain and carry an interest rate of approximately 2.85% with a 40-year term and amortization.

A copy of the Exhibits recommended to be approved by the Board as referenced in Resolution No. 21-010 can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.

EXHIBIT A

Oso Bay
ORGANIZATIONAL CHART



RESOLUTION NO. 21-010

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (OSO BAY APARTMENTS) SERIES 2021; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; 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, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); 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 individuals 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 (including notes), 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, the Board has determined to authorize the issuance of its Multifamily Housing Revenue Bonds (Oso Bay Apartments) Series 2021 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and Regions Bank, as trustee (the "Trustee"), for the purpose of providing funds in connection with the financing of the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to Oso Bay Apartments, LLC, a Texas limited liability company (the "Borrower"), in connection with the acquisition, rehabilitation and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the

State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on July 23, 2020, declared its intent to issue its revenue bonds or notes to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and;

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Loan Agreement (the "Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the acquisition, rehabilitation and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a promissory note (the "Borrower Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

WHEREAS, it is anticipated that the obligations of the Borrower under the Loan Agreement will be secured by a Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Bond Mortgage") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Borrower Note and the Bond Mortgage will be assigned to the Trustee pursuant to an Assignment of Deed of Trust Documents (the "Assignment") from the Department to the Trustee; and

WHEREAS, the Borrower will obtain a first lien mortgage loan from Regions Bank (the "HUD Lender"), and the Board has determined that the Department will execute and deliver a (i) Funding Agreement (the "Funding Agreement") with the HUD Lender, the Trustee and the Borrower and (ii) Loan Disbursement Procedures Agreement (the "Disbursement Agreement") with the HUD Lender, the Trustee, the Borrower, and the other parties identified therein, pursuant to which the HUD Lender will deposit from time to time the proceeds of the first lien mortgage loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, with respect to the Bonds, the Board has determined that the Department, the Trustee and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Nueces County, Texas; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Code, the Board has determined that the Department, the Trustee and the Borrower will

execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Bonds, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Bonds as exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an official statement (the "Official Statement") and to authorize the Authorized Representatives (as defined herein) to deem the Official Statement "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final official statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Purchase Agreement") with Colliers Securities LLC (the "Underwriter") and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Funding Agreement, the Disbursement Agreement, the Assignment, the Tax Exemption Agreement, the Official Statement and the Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Bond Mortgage and the Borrower Note; has found 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, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond Mortgage and the Borrower Note and the taking of such other actions as may be necessary or convenient in connection therewith;

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 the Bonds is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, and Chapter 1371, Texas Government Code, all under and in accordance with the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the 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 the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Trustee for authentication (to the extent required in the Indenture), and thereafter to deliver the Bonds to or upon the order of the Underwriter.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative (as defined below) of the Department of the Indenture and the Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Purchase Agreement in accordance with the provisions of the Indenture; provided that in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Bonds shall not exceed 2.50%; (ii) the aggregate principal amount of the Bonds shall not exceed \$14,000,000; (iii) the final maturity of the Bonds shall occur not later than September 1, 2024; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Purchase Agreement shall not exceed 100% of the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

Section 1.4 Approval, Execution and Delivery of the Loan Agreement. That the form and substance of the Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Loan Agreement, and to deliver the Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Nueces County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the Borrower and the Trustee.

Section 1.7 Approval, Execution and Delivery of the Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Purchase Agreement is hereby approved, that the form and substance of the Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Purchase Agreement and to deliver the Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Purchase Agreement, as appropriate.

Section 1.8 Approval, Execution and Delivery of the Funding Agreement. That the form and substance of the Funding Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Funding Agreement, and to deliver the Funding Agreement to the HUD Lender, the Trustee and the Borrower.

Section 1.9 Approval, Execution and Delivery of the Disbursement Agreement. That the form and substance of the Disbursement Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Disbursement Agreement, and to deliver the Disbursement Agreement to the HUD Lender, the Trustee, the Borrower, and the other parties thereto.

Section 1.10 Acceptance of the Borrower Note and the Bond Mortgage. That the form and substance of the Borrower Note and the Bond Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note without recourse.

Section 1.11 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Trustee.

Section 1.12 Approval, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Authorized Representatives are hereby severally authorized to deem the Official Statement “final” for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Purchase Agreement and as may be approved by the Executive Director of the Department and the Department’s counsel.

Section 1.13 [Reserved].

Section 1.14 [Reserved].

Section 1.15 [Reserved].

Section 1.16 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, 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 they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.17 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, and in the opinion of Bracewell LLP, Bond Counsel to the Department ("Bond Counsel"), 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 1.18 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 B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Borrower Note
- Exhibit F - Bond Mortgage
- Exhibit G - Assignment
- Exhibit H - Purchase Agreement
- Exhibit I - Official Statement
- Exhibit J - Tax Exemption Agreement
- Exhibit K - Funding Agreement
- Exhibit L - Disbursement Agreement

Section 1.19 Authorized Representatives. That 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 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 Multifamily Bonds 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

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Bonds and all other Department activities.

Section 2.4 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from Moody's Investors Services, Inc., and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Colliers Securities LLC, or any other party identified in the Purchase Agreement.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

ARTICLE 3

CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Loan Agreement, the Regulatory Agreement and the Tax Exemption

Agreement, which require, among other things, that the Development be occupied by individuals and families of low and very low income and families of moderate income, and

(ii) that the issuance of the Bonds in connection with the financing of the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low and very low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Bonds in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Bonds and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Indenture, including the revenues and funds of the Department pledged under the Indenture to secure payment of the Bonds, 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. Each Note shall contain on its face a statement to the effect that the State is not obligated to pay the

principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing 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 Section 2306.032 of the Texas Government Code, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act regarding meetings of the Governing Board.

PASSED AND APPROVED this 14th day of January, 2021.

EXHIBIT A

Description of Development

Borrower: Oso Bay Apartments, LLC, a Texas limited liability company

Development: The Development is a 104-unit affordable, multifamily housing development known as Oso Bay Apartments, located at 7502 McArdle Road, Corpus Christi, Nueces County, TX 78412. It consists of eight (8) residential apartment buildings with approximately 84,792 net rentable square feet. The unit mix will consist of:

32	one-bedroom/one-bath units
56	two-bedroom/one-and-one-half-bath units
16	three-bedroom/two-bath units
<hr/>	
104	Total Units

Unit sizes will range from approximately 654 square feet to approximately 1,048 square feet.

20620 Oso Bay Apartments - Application Summary

PROPERTY IDENTIFICATION	
Application #	20620
Development	Oso Bay Apartments
City / County	Corpus Christi / Nueces
Region/Area	10 / Urban
Population	General
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1971)

RECOMMENDATION						
TDHCA Program	Request	Recommended				
LIHTC (4% Credit)	\$869,817	\$869,817	\$8,364/Unit	\$0.93		
Private Activity Bonds	\$14,000,000	2.85%	40	40	1	

KEY PRINCIPALS / SPONSOR		
Vitus Development IV, LLC: LP, Co-Developer		
Commonwealth Multifamily Housing Corp.: GP, Co-Developer		
Related Parties	Contractor - No	Seller - No

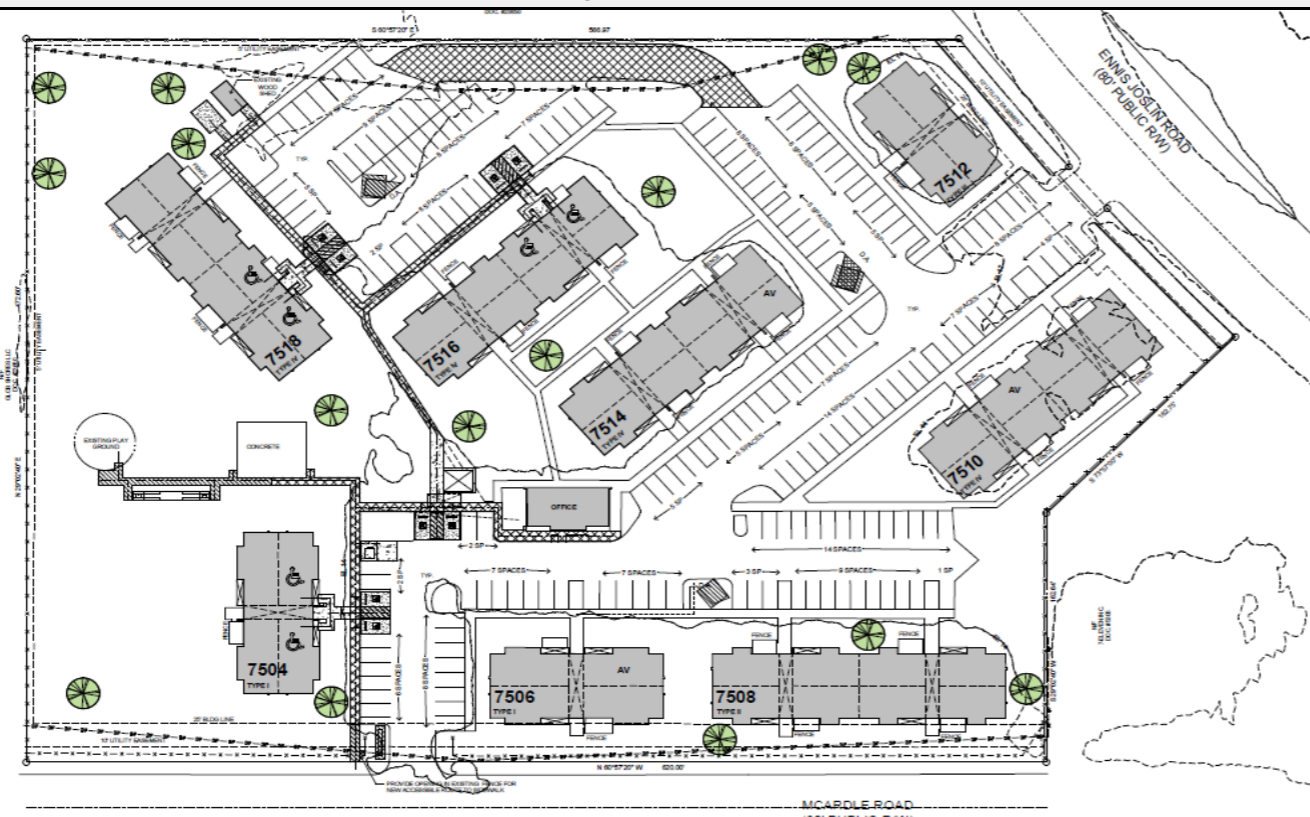
TYPICAL BUILDING ELEVATION/PHOTO




UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	32	31%	40%	-	0%
2	56	54%	50%	-	0%
3	16	15%	60%	104	100%
4	-	0%	MR	-	0%
TOTAL	104	100%	TOTAL	104	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.23	Expense Ratio	41.7%
Breakeven Occ.	84.5%	Breakeven Rent	\$1,155
Average Rent	\$1,300	B/E Rent Margin	\$146
Property Taxes	\$786/unit	Exemption/PILOT	0%
Total Expense	\$6,279/unit	Controllable	\$3,381/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (0% Maximum)			N/A
Highest Unit Capture Rate	0%	#N/A	
Dominant Unit Cap. Rate		0 BR/20%	0
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	100	96% Total Units	

DEVELOPMENT COST SUMMARY			
Costs Underwritten	TDHCA's Costs - Based on PCA		
Avg. Unit Size	815 SF	Density	14.9/acre
Acquisition	\$128K/unit	\$13,262K	
Building Cost	\$55.89/SF	\$46K/unit	\$4,739K
Hard Cost	\$54K/unit		\$5,606K
Total Cost	\$247K/unit		\$25,722K
Developer Fee	\$2,956K	(40% Deferred)	Paid Year: 6
Contractor Fee	\$785K	30% Boost	Yes

REHABILITATION COSTS / UNIT				
Site Work	\$3K	6%	Finishes/Fixtures	\$28K 52%
Building Shell	\$9K	17%	Amenities	\$K 0%
HVAC	\$6K	12%	Total Exterior	\$13K 26%
Appliances	\$2K	4%	Total Interior	\$36K 74%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Regions	40/40	2.85%	\$16,310,000	1.23						Regions	\$8,131,976	
										Vitus Development IV, LLC	\$1,179,147	
										Income From Operations	\$100,460	
										TOTAL EQUITY SOURCES	\$9,512,241	
										TOTAL DEBT SOURCES	\$16,310,000	
TOTAL DEBT (Must Pay)			\$16,310,000		CASH FLOW DEBT / GRANTS			\$0		TOTAL CAPITALIZATION		\$25,822,241

CONDITIONS

- 1 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials and lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
- 2 Receipt and acceptance by Cost Certification:
 - Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.

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	TDHCA
Expiration Date	3/22/2021
Bond Amount	\$14,000,000
BRB Priority	Priority 2
Bond Structure	HUD 221 (d)(4) - Cash Collateralized
% Financed with Tax-Exempt Bonds	66.6%

RISK PROFILE

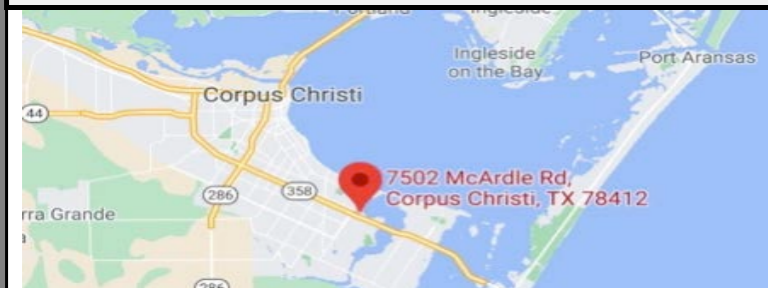
STRENGTHS/MITIGATING FACTORS

- Location
- Overall Feasibility Indicators
- 96% Section 8 HAP Assisted

WEAKNESSES/RISKS

- Developer's lack of LIHTC experience in Texas
- High Controllable Expenses

AREA MAP



AERIAL PHOTOGRAPH(S)





DEVELOPMENT IDENTIFICATION

TDHCA Application #: 20620 Program(s): TDHCA Bonds/4% HTC

Oso Bay Apartments

Address/Location: 7502 McArdle Road

City: Corpus Christi County: Nueces Zip: 78412

Population: General Program Set-Aside: General Area: Urban

Activity: Acquisition/Rehab Building Type: Garden (Up to 4-story) Region: 10

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
Private Activity Bonds	\$14,000,000	0.00%	0	0	\$14,000,000	2.85%	40	40	1
LIHTC (4% Credit)	\$869,817				\$869,817				

CONDITIONS

- Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
 - Certification of comprehensive testing for asbestos; that any appropriate abatement procedures were implemented; and that any remaining asbestos-containing materials and lead-based paint are being managed in accordance with an acceptable Operations and Maintenance (O&M) program.
 - Receipt and acceptance by Cost Certification:
 - Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.
- 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.

SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	104

DEVELOPMENT SUMMARY

Oso Bay Apartments is an existing Project-Based Section 8 community located in Corpus Christi, TX. This application is for the acquisition and rehab of the property. Rehab will include \$49K/unit of improvements.

The community will serve the general population at 60% Area Median Income (AMI). Of the 104 units, 100 are covered by a HAP contract. The remaining four units will be restricted to 60% AMI.

Applicant has received approval for Mark-Up-To-Market (MUTM) rent increases for the 100 HAP units.

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	Location
▫	Overall Feasibility Indicators
▫	96% Section 8 HAP Assisted
▫	Low Expense-Ratio

WEAKNESSES/RISKS	
▫	Developer's lack of LIHTC experience in Texas
▫	High Controllable Expenses
▫	
▫	

DEVELOPMENT TEAM

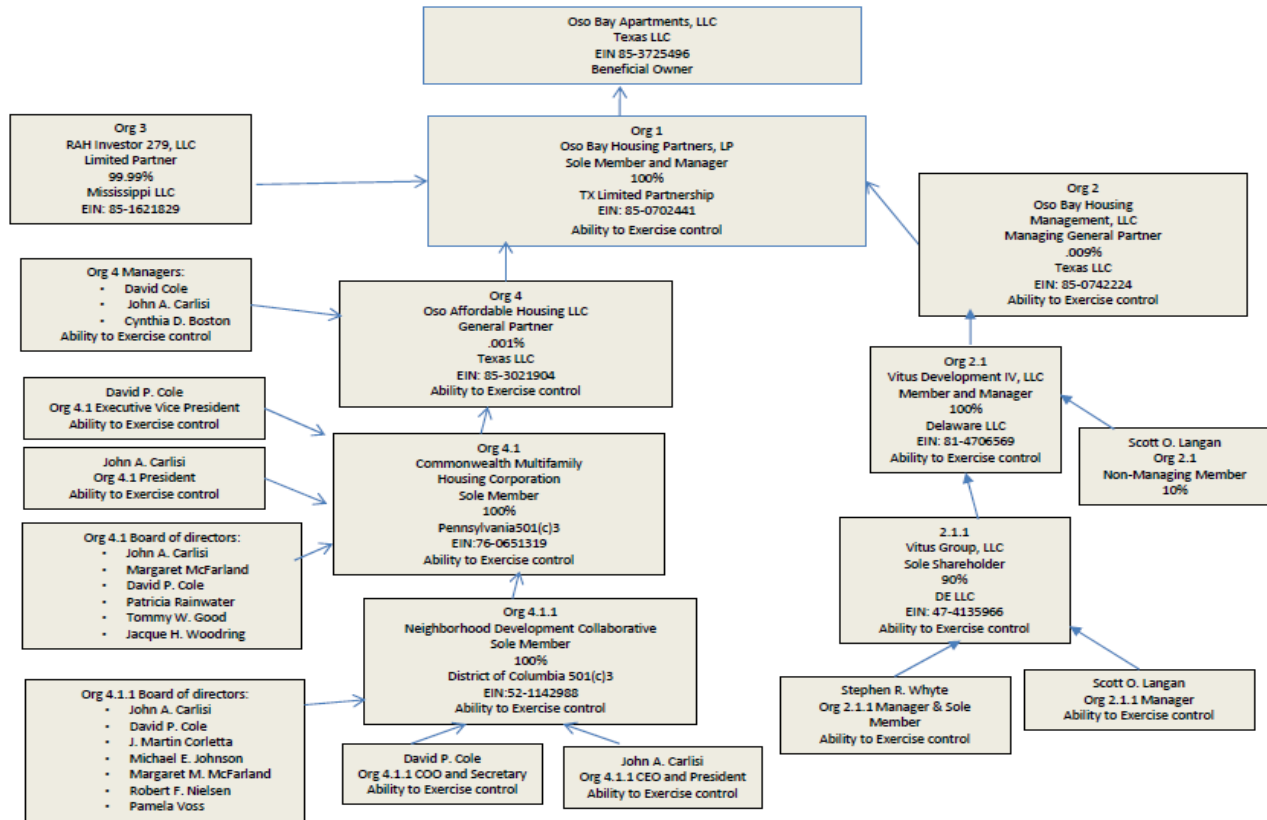
PRIMARY CONTACTS

Name: Samantha Cullen
 Phone: (206) 832-1326
 Relationship: Co-Developer

Name: Brian Moloney
 Phone: (206) 832-1321
 Relationship: Co-Developer

OWNERSHIP STRUCTURE

Oso Bay Applicant ORGANIZATIONAL CHART

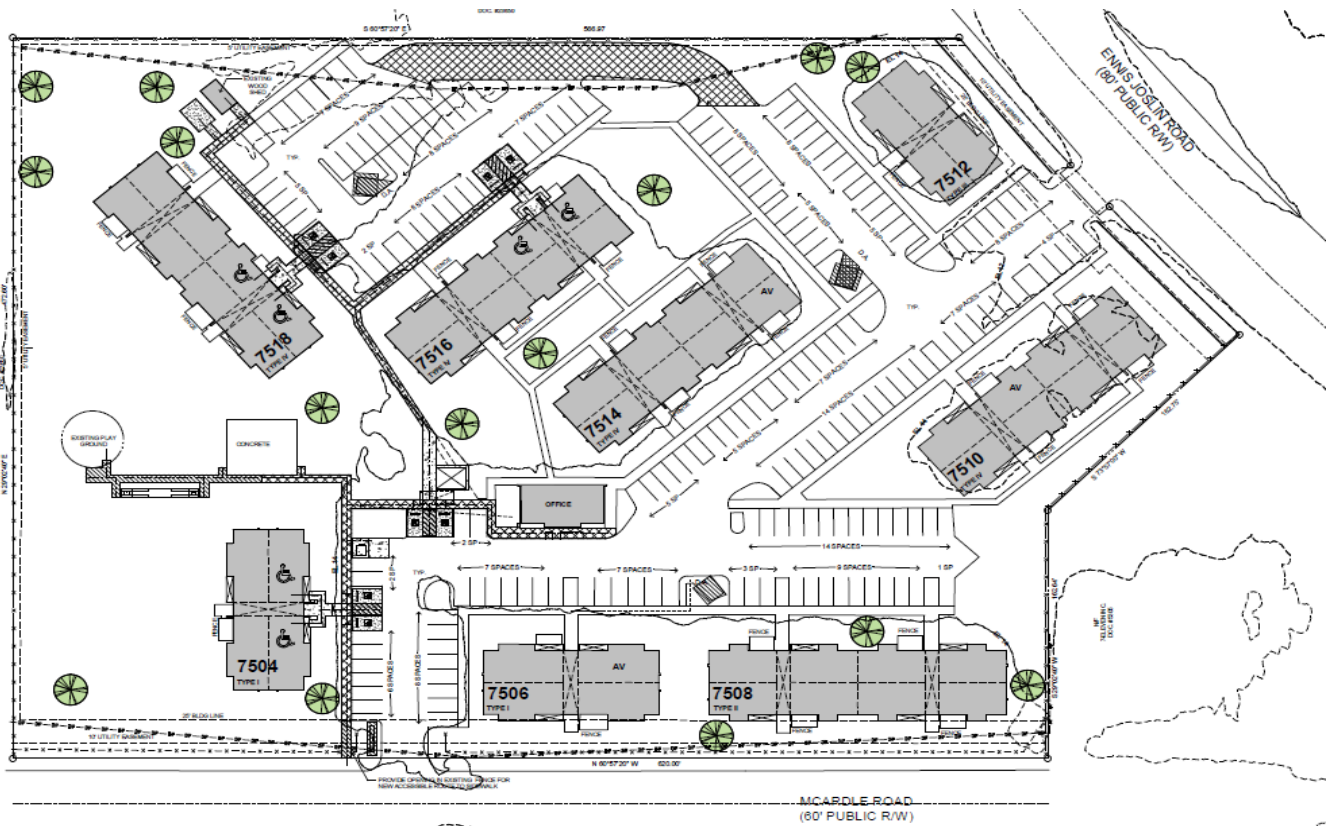


- Vitus focuses on preserving and enhancing affordable housing. The company acquires and renovates affordable communities, and has preserved 100 properties across 22 states. This will be the company's first time participating with TDHCA. <https://vitus.com/>

Commonwealth Multifamily Housing Corporation is an independent nonprofit, serving as Co-Developer and General Partner. The organization has experience with a number of TDHCA programs.

DEVELOPMENT SUMMARY

SITE PLAN



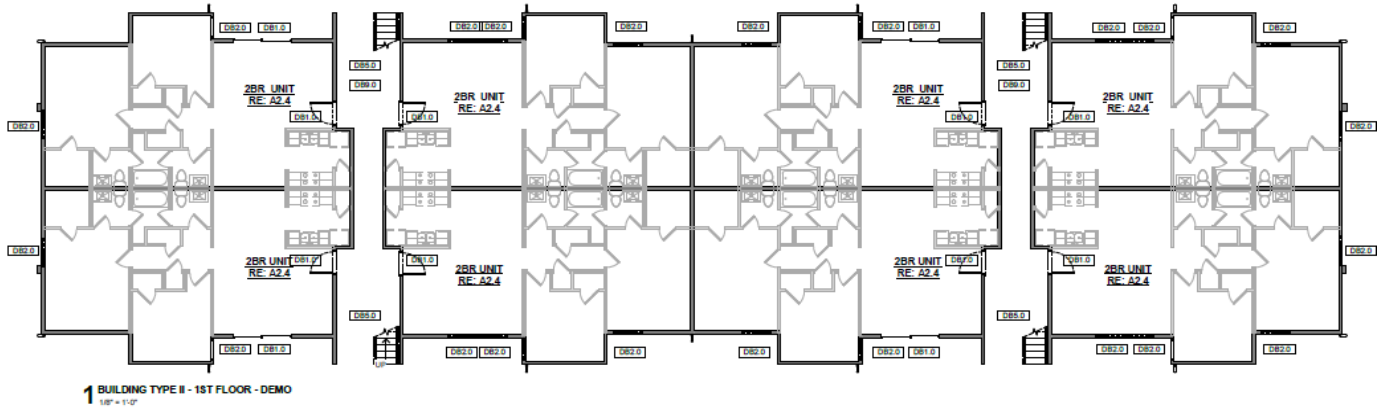
Comments:

The 6.99-acre site is relatively flat, with slopes for storm drainage toward the driveway entrances. The community is accessible from McArdle Rd. and Ennis Joslin Rd.

The site has 186 parking spaces, which represent 1.8 spaces/unit. Per Corpus Christi Unified Development Code Amendment in 2019, the community has a legally nonconforming status as it pertains to parking regulation due to being constructed in 1971.

Site amenities include a playground and community laundry room.

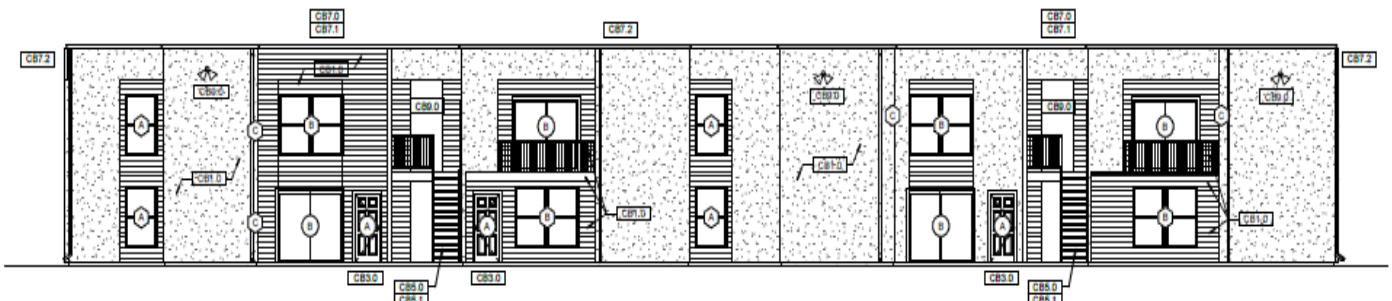
BUILDING PLAN (Typical)



Comments:

The building plan consists of 8, two-story walk up garden buildings and a one-story community building. All units have 8 foot ceilings, a patio or balcony, and a coat closet. There are no washer/dryer hook-ups in the units. Two-bedroom units include a half bath.

BUILDING ELEVATION



Comments:

Building exteriors are wood-framed with painted stucco walls. There is little articulation. Flat TPO roof.

Tenant Relocation Plan

Applicant provided a tenant relocation plan, which indicates that the rehab is expected to be completed with 96-98 units in-place and 6 units temporarily relocated for up to 30 days while the units are rehabbed to comply with accessibility requirements.

Residents who are temporarily relocated will be housed in a nearby hotel and have their household items stored at no cost. During working hours, residents will be able to stay in designated community areas and/ or will be provided various alternatives while rehabilitation is taking place. Meal vouchers and/ or other comfort items will be provided to assist households when they are not able to access their units.

Estimated relocation cost of \$375K is included in the Development Cost Schedule.

No permanent displacement is expected for rehab. Relocation plan is anticipated to satisfy HUD and TDHCA requirements.

BUILDING CONFIGURATION

Building Type	Type I	Type II	Type III	Type IV									Total Buildings
Floors/Stories	2	2	2	2									
Number of Bldgs	2	1	1	4									8
Units per Bldg	8	16	8	16									
Total Units	16	16	8	64									104
Avg. Unit Size (SF)		815 sf		Total NRA (SF)		84,792		Common Area (SF)*		11,105			

*Common Area Square Footage as specified on Architect Certification

SITE CONTROL INFO

Site Acreage: Development Site: 6.99 acres Density: 14.9 units/acre
Site Control: N/A **Site Plan:** 6.99 **Appraisal:** 6.99 **ESA:** 6.99

Control Type: Special Warranty Deed Deed Date: 9/9/2020

Total Acquisition: 6.99 acres Cost: \$13,200,000

Seller: 7502 McArdie Road, LLC.

Buyer: Oso Bay Housing Partners, LP

Assignee: Oso Bay Holdings, LLC.

Related-Party Seller/Identity of Interest: No

Comments:

Acquisition of property occurred prior to the award of bonds and credits. Per Applicant, the Seller demanded a quick close and was unwilling to wait until the allocation of bonds and credits. Applicant acquired the property with bridge financing to accommodate the desired closing timeline.

Applicant provided a Contribution and Distribution Agreement, showing that Oso Bay Housing Partners, LLC contributed the property to Oso Bay Holdings, LLC.

APPRAISED VALUE

Appraiser: Novogradic Consulting LLP Date: 4/8/2020

Land as Vacant: 6.99 acres	<u>\$760,000</u>	Per Unit:	<u>\$7,308</u>
Existing Buildings: (as-is)	<u>\$13,340,000</u>	Per Unit:	<u>\$128,269</u>
Total Development: (as-is)	<u>\$14,100,000</u>	Per Unit:	<u>\$135,577</u>

Comments:

The Appraisal indicates the value of the land as if vacant at \$760,000.

The Appraisal indicates the value of the total development as-is, as-restricted at \$14,100,000. Valuation is based on capitalization of income using the existing HAP Contract Rents approved 10/1/2020.

SITE INFORMATION

Flood Zone:	<u>B</u>	Scattered Site?	<u>No</u>
Zoning:	<u>RM-1, Multifamily 1 District</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>1971</u>	Title Issues?	<u>No</u>

Current Uses of Subject Site:

104 unit apartment complex built in 1971

Surrounding Uses:

North: Multifamily & Oso Bay
 East: Multifamily, Gas Station, & Oso Bay
 South: Multifamily
 West: Multifamily

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Partner Engineering and Science, Inc. Date: 3/21/2020

Recognized Environmental Conditions (RECs) and Other Concerns:

- None

Comments:

Per ESA, observed asbestos containing materials were present in drywall systems and exterior stucco. Provider recommends a comprehensive asbestos survey be completed. Per ESA, there is potential that lead-based paint is present. Interior and exterior surfaces were observed in good condition and not expected to represent a "hazard." An Asbestos-Containing Materials & Lead Based Paint Operations and Maintenance Plan was prepared.

ESA Provider observed water damage in one of the units. It is recommended that the source of the water intrusion be repaired, and affected materials repaired/ replaced.

Radon sampling was not conducted as part of assessment due to subject property being located in a low potential radon zone. Per ESA, radon is not considered to be a significant environmental concern.

MARKET ANALYSIS

Provider: Novogradac

Date: 10/2/2020

ELIGIBLE HOUSEHOLDS BY INCOME								
9340								
HH Size		1	2	3	4	5	6	7+
60% AMGI	Min	\$21,600	\$21,600	\$24,936	\$24,936	---	\$0	\$0
	Max	\$36,000	\$39,960	\$43,200	\$46,380	---	\$0	\$0

Demand Analysis:

Market Analyst calculates a Gross Capture Rate of 1.1% for the four HTC units. Underwriter reviewed the market study for compliance.

Capture rate limits do not apply to existing affordable housing that is at least 50% occupied and that provides a leasing preference to existing tenants. The Subject property is covered by a Housing Assistance Program contract, meaning that all households below the maximum income level are eligible.

Subject is currently 98% occupied.

OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$913,425	Avg. Rent:	\$1,300	Expense Ratio:	41.7%
Debt Service:	\$740,919	B/E Rent:	\$1,155	Controllable Expenses:	\$3,381
Net Cash Flow:	\$172,506	UW Occupancy:	95.0%	Property Taxes/Unit:	\$786
Aggregate DCR:	1.23	B/E Occupancy:	84.5%	Program Rent Year:	2020

100 units are supported by Section 8 HAP Rental Assistance. The remaining four affordable units will be restricted at 60% AMI levels. Applicant projects \$5 less than maximum Program Rents for these units.

Applicant has provided approval of Mark-up-to-Market HAP Rent increase. Underwritten Contract Rents represent a 13% increase over current contract rents.

Unit Type	Current Net HAP Rent	Anticipated Net HAP Rent	Increase	Variance
1BR/1BA	\$915	\$1,090	\$175	19%
2BR/1.5BA	\$1,230	\$1,360	\$130	11%
3BR/2BA	\$1,550	\$1,680	\$130	8%

Average rent is \$146 above breakeven rent. Project is underwritten at 5 units vacant; Break even vacancy is 16 units. Vacancy is assumed at 5% instead of the standard 7.5% due to the HAP contract.

Applicant provided executed management contract to support 4% fee assumption. If standard 5% fee is assumed, DCR would decrease to 1.21.

Supportive services show an expense of \$26,498 and will be underwritten at cost certification regardless if incurred. Per Applicant, these services will include after-school care and tutoring, recreational activities, test preparation, on-site classes, resume and interview preparatory courses, and quarterly on-site social activities.

Underwriter's utility assumptions are based off trailing 12-month expenses incurred at the property. Controllable expenses are relatively high at \$3,381/unit, mainly attributed to payroll. Applicant provided a detailed staffing plan to support this expense.

REHABILITATION COSTS / UNIT / % HARD COST							
Site Work	\$344,660	\$3,314/unit	6%	Finishes/Fixtures	\$2,896,692	\$27,853/unit	52%
Building Shell	\$974,410	\$9,369/unit	17%	HVAC	\$645,711	\$6,209/unit	12%
Amenities	\$12,000	\$115/unit	0%	Appliances	\$222,527	\$2,140/unit	4%
Total Exterior	\$1,331,070	\$12,799/unit	26%	Total Interior	\$3,764,930	\$36,201/unit	74%

SCOPE & COST REVIEW

Provider: Partner Engineering and Science, Inc. Date: 4/1/2020

Ineligible Costs:

\$375K Tenant Relocation is excluded from eligible basis.

Financing Cost:

Per Applicant, construction period interest is included in the "Prefunded Interest Reserve" line item on the Development Cost Schedule.

Reserves:

Reserves equal 4 months of operating expenses and debt service.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$25,721,781	\$22,665,640	\$869,817

Related-Party Contractor: No

Related-Party Cost Estimator: No

Revisions to Development Cost Schedule:	2
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UNDERWRITTEN CAPITALIZATION

BOND RESERVATION			
Issuer	Amount	Reservation Date	Priority
TDHCA	\$14,000,000	9/23/2020	Priority 2
Closing Deadline	Bond Structure		
3/22/2021	HUD 221 (d)(4) - Cash Collateralized		

Percent of Cost Financed by Tax-Exempt Bonds	66.6%
---	--------------

Comments:

The project will be financed with \$14M cash-collateralized tax-exempt bonds, issued by TDHCA, and backed by a \$16,310,000 FHA 221(d)(4) mortgage loan. Tax-exempt bond proceeds will be deposited into a Project Fund at closing, and FHA mortgage loan proceeds will be deposited into a Collateral Fund. As proceeds from the tax-exempt bonds are disbursed from the Project Fund to pay for eligible project costs, an equal amount of replacement proceeds will simultaneously be deposited into the Collateral Fund from fundings on the FHA insured mortgage loan. Thus, the Bond issue principal will remain cash-collateralized at all times. Funds on deposit in the Collateral Fund will be used to redeem the Bonds in full once the rehab is complete and the project is placed in service.

INTERIM SOURCES				
Funding Source	Description	Amount	Rate	LTC
Regions	Conventional/FHA	\$16,310,000	2.85%	69%
Regions Equity	Bridge Loan	\$4,500,000	3.75%	19%
Regions	HTC	\$1,626,395	\$0.93	7%
Vitus Development IV, LLC	Deferred Fee	\$1,179,344		5%
Income From Operations	Net Operating Income	\$100,460		0%
		\$23,716,199	Total Sources	

PERMANENT SOURCES									
Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Regions	\$16,310,000	2.85%	40	40	\$16,310,000	2.85%	40	40	63%
Total	\$16,310,000				\$16,310,000				

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Regions	\$8,131,976	\$0.93		\$8,131,976	\$0.93	32%	
Vitus Development IV, LLC	\$1,179,344		40%	\$1,179,147		5%	40%
Income From Operations	\$100,460			\$100,658		0%	
Total	\$9,411,780			\$9,411,781			
				\$25,721,781	Total Sources		

Credit Price Sensitivity based on current capital structure	
\$1.070	Maximum Credit Price before the Development is oversourced and allocation is limited
\$0.731	Minimum Credit Price below which the Development would be characterized as infeasible

Comments:

Regions Bank will provide a \$16,310,000 FHA 221(d)(4) mortgage with a 40-year term, plus construction period, and a 40-year amortization schedule. Regions term sheet indicates a preliminary interest rate of 2.85%. Underwritten debt service also includes 0.25% FHA Mortgage Insurance Premium and 0.10% TDHCA Bond Issuer Fee.

A \$4.5M Bridge Loan is being provided by Regions Bank with a loan term of 18 months and an extension of up to 6-months.

Owner will be reinvesting NOI in the project during construction. A leasing schedule was provided to support this interim source.

Total Capital Contribution of \$8,131,976 from Regions Bank is being provided at a \$0.935 credit price. 17% of Developer Fee will be deferred.

Revisions to Sources Schedule:	2
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CONCLUSIONS

Gap Analysis:	
Total Development Cost	\$25,721,781
Permanent Sources (debt + non-HTC equity)	\$16,410,658
Gap in Permanent Financing	\$9,311,123

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$8,131,976	\$869,817
Needed to Balance Sources & Uses	\$9,311,123	\$995,942
Requested by Applicant	\$8,131,976	\$869,817

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$8,131,976	\$869,817

	Amount	Interest Rate	Amort	Term	Lien
TDHCA-Issued Bonds	\$14,000,000	2.85%	40	40	1
Deferred Developer Fee	\$1,179,147	(40% deferred)			
Repayable in	6 years				

Comments:

Underwriter recommends \$869,817 in annual tax credits as requested by Applicant.

Since the acquisition occurred in 2020, acquisition tax credits are calculated using the 3.07% applicable percentage in place at that time. The Applicant's request for credits on the rehabilitation basis was revised to reflect the 4.00% applicable percentage set by federal legislation passed at the end of 2020.

Underwriter:	<i>Curtis Wilkins</i>
Manager of Real Estate Analysis:	<i>Thomas Cavanagh</i>
Director of Real Estate Analysis:	<i>Brent Stewart</i>

UNIT MIX/RENT SCHEDULE
Oso Bay Apartments, Corpus Christi, TDHCA Bonds/4% HTC #20620

LOCATION DATA	
CITY:	Corpus Christi
COUNTY:	Nueces
Area Median Income	\$66,600
PROGRAM REGION:	10
PROGRAM RENT YEAR:	2020

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	32	30.8%	32	0
2	56	53.8%	54	0
3	16	15.4%	14	0
4	-	0.0%	0	0
5	-	0.0%	0	0
TOTAL	104	100.0%	100	-

60% Income	Average Income	
	# Units	% Total
20%	-	0.0%
30%	-	0.0%
40%	-	0.0%
50%	-	0.0%
60%	104	100.0%
70%	-	0.0%
80%	-	0.0%
MR	-	0.0%
TOTAL	104	100.0%

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100%
APP % Acquisition	3.07%
APP % Construction	4.00%
Average Unit Size	815 sf

UNIT MIX / MONTHLY RENT SCHEDULE																							
HTC		MRB		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 60%	\$750	MRB 60%	\$750	HAP	\$1,163	32	1	1.0	654	\$1,163	\$73	\$1,090	\$0	\$1.67	\$1,090	\$34,880	\$34,880	\$1,090	\$1.67	\$0	\$1,030	\$1.57	\$1,030
TC 60%	\$900	MRB 60%	\$900	HAP	\$1,464	54	2	1.5	841	\$1,464	\$104	\$1,360	\$0	\$1.62	\$1,360	\$73,440	\$73,440	\$1,360	\$1.62	\$0	\$1,230	\$1.46	\$1,230
TC 60%	\$900	MRB 60%	\$900	0		2	2	1.5	841	\$900	\$104	\$796	(\$5)	\$0.94	\$791	\$1,582	\$1,592	\$796	\$0.95	\$0	\$1,230	\$1.46	\$1,230
TC 60%	\$1,039	MRB 60%	\$1,039	HAP	\$1,817	14	3	2.0	1,048	\$1,817	\$137	\$1,680	\$0	\$1.60	\$1,680	\$23,520	\$23,520	\$1,680	\$1.60	\$0	\$1,530	\$1.46	\$1,530
TC 60%	\$1,039	MRB 60%	\$1,039	0		2	3	2.0	1,048	\$1,039	\$137	\$902	(\$5)	\$0.86	\$897	\$1,794	\$1,804	\$902	\$0.86	\$0	\$1,530	\$1.46	\$1,530
TOTALS/AVERAGES:						104			84,792				(\$0)	\$1.59	\$1,300	\$135,216	\$135,236	\$1,300	\$1.59	\$0	\$1,215	\$1.49	\$1,215

ANNUAL POTENTIAL GROSS RENT:	\$1,622,592	\$1,622,832
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STABILIZED PRO FORMA

Oso Bay Apartments, Corpus Christi, TDHCA Bonds/4% HTC #20620

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE		
	Database	T-12	COMPS	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
	POTENTIAL GROSS RENT					\$1.59	\$1,300	\$1,622,592	\$1,622,832	\$1,300	\$1.59		0.0%
Tenant Charges						\$9.04	\$11,280						
NSF and Late Fees						\$11.64	\$14,532						
Application Fees						\$0.35	\$432						
Total Secondary Income						\$21.03		\$24,960	\$20.00			5.1%	\$1,284
POTENTIAL GROSS INCOME							\$1,648,836	\$1,647,792				0.1%	\$1,044
Vacancy & Collection Loss						5.0% PGI	(82,442)	(82,390)	5.0% PGI			0.1%	(52)
Rental Concessions							-	-				0.0%	-
EFFECTIVE GROSS INCOME							\$1,566,394	\$1,565,402				0.1%	\$992

General & Administrative	\$44,570	\$429/Unit	\$56,959	\$548	\$58,481	\$562	3.98%	\$0.74	\$600	\$62,368	\$56,959	\$548	\$0.67	3.64%	9.5%	5,409
Management	\$44,270	4.1% EGI	\$44,260	\$426	\$53,160	\$511	4.00%	\$0.74	\$602	\$62,656	\$62,616	\$602	\$0.74	4.00%	0.1%	40
Payroll & Payroll Tax	\$132,761	\$1,277/Unit	\$92,358	\$888	\$152,101	\$1,463	8.00%	\$1.48	\$1,206	\$125,380	\$125,380	\$1,206	\$1.48	8.01%	0.0%	-
Repairs & Maintenance	\$80,951	\$778/Unit	\$34,509	\$332	\$98,317	\$945	4.29%	\$0.79	\$645	\$67,130	\$67,600	\$650	\$0.80	4.32%	-0.7%	(470)
Electric/Gas	\$32,542	\$313/Unit	\$21,568	\$207	\$18,552	\$178	1.28%	\$0.24	\$193	\$20,106	\$21,568	\$207	\$0.25	1.38%	-6.8%	(1,462)
Water, Sewer, & Trash	\$82,400	\$792/Unit	\$81,076	\$780	\$87,910	\$845	4.89%	\$0.90	\$737	\$76,618	\$81,076	\$780	\$0.96	5.18%	-5.5%	(4,458)
Property Insurance	\$55,305	\$0.65 /sf	\$122,384	\$1,177	\$83,493	\$803	5.59%	\$1.03	\$842	\$87,528	\$87,528	\$842	\$1.03	5.59%	0.0%	-
Property Tax (@ 100%) 2.6209	\$44,998	\$433/Unit	\$71,015	\$683	\$37,608	\$362	5.22%	\$0.96	\$786	\$81,725	\$71,015	\$683	\$0.84	4.54%	15.1%	10,710
Reserve for Replacements				\$0			1.99%	\$0.37	\$300	\$31,200	\$31,200	\$300	\$0.37	1.99%	0.0%	-
Supportive Services				\$0			1.69%	\$0.31	\$255	\$26,498	\$26,498	\$255	\$0.31	1.69%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)				\$0			0.27%	\$0.05	\$40	\$4,160	\$4,160	\$40	\$0.05	0.27%	0.0%	-
TDHCA Bond Compliance Fee				\$0			0.17%	\$0.03	\$25	\$2,600	\$2,600	\$25	\$0.03	0.17%	0.0%	-
Bond Trustee Fees				\$0			0.32%	\$0.06	\$48	\$5,000	\$5,000	\$48	\$0.06	0.32%	0.0%	-
TOTAL EXPENSES							41.69%	\$7.70	\$6,279	\$ 652,970	\$643,200	\$6,185	\$7.59	41.09%	1.5%	\$ 9,770
NET OPERATING INCOME ("NOI")							58.31%	\$10.77	\$8,783	\$913,425	\$922,202	\$8,867	\$10.88	58.91%	-1.0%	\$ (8,778)

CONTROLLABLE EXPENSES									\$3,381/Unit				\$3,390/Unit			
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Oso Bay Apartments, Corpus Christi, TDHCA Bonds/4% HTC #20620

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE								AS UNDERWRITTEN DEBT/GRANT STRUCTURE							
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Regions	0.35%	1.24	1.23	741,422	2.85%	40	40	\$16,310,000	\$16,310,000	40	40	2.85%	\$740,919	1.23	63.4%
CASH FLOW DEBT / GRANTS				\$741,422	TOTAL DEBT / GRANT SOURCES			\$16,310,000	\$16,310,000	TOTAL DEBT SERVICE			\$740,919	1.23	63.4%
NET CASH FLOW		\$180,780	\$172,003	APPLICANT				NET OPERATING INCOME				\$913,425	\$172,506	NET CASH FLOW	

EQUITY SOURCES												
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE						
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method	
Regions	LIHTC Equity	31.6%	\$869,817	0.935	\$8,131,976	\$8,131,976	\$0.935	\$869,817	31.6%	\$8,364	Applicant Request	
Vitus Development IV, LLC	Deferred Developer Fees	4.6%	(40% Deferred)		\$1,179,344	\$1,179,147	(40% Deferred)		4.6%	Total Developer Fee:	\$2,956,388	
Income From Operations		0.4%			\$100,460	\$100,658			0.4%			
Additional (Excess) Funds Req'd		0.0%				\$0			0.0%			
TOTAL EQUITY SOURCES		36.6%			\$9,411,780	\$9,411,781			36.6%			
TOTAL CAPITALIZATION					\$25,721,780	\$25,721,781					15-Yr Cash Flow after Deferred Fee:	\$2,825,337

DEVELOPMENT COST / ITEMIZED BASIS												
APPLICANT COST / BASIS ITEMS						TDHCA COST / BASIS ITEMS				COST VARIANCE		
	Eligible Basis		Total Costs		Total Costs	Eligible Basis		%	\$			
	Acquisition	New Const. Rehab				New Const. Rehab	Acquisition					
Land Acquisition			\$7,308 / Unit	\$760,000	\$760,000	\$7,308 / Unit		0.0%	\$0			
Building Acquisition	\$12,440,000		\$119,615 / Unit	\$12,440,000	\$12,440,000	\$119,615 / Unit		0.0%	\$0			
Closing costs & acq. legal fees				\$62,344	\$62,344				\$0			
Off-Sites			\$ / Unit	\$0	\$0	\$ / Unit		0.0%	\$0			
Site Work		\$288,893	\$2,778 / Unit	\$288,893	\$344,660	\$3,314 / Unit	\$344,660	-16.2%	(\$55,767)			
Site Amenities		\$12,000	\$115 / Unit	\$12,000	\$12,000	\$115 / Unit	\$12,000	0.0%	\$0			
Building Cost		\$4,795,106	\$56.55 /sf	\$46,107/Unit	\$4,795,106	4,739,340	\$45,571/Unit	\$55.89 /sf	\$4,739,340			
Contingency		\$509,600	10.00%	10.00%	\$509,600	\$509,600	10.00%	10.00%	\$509,600			
Contractor Fees		\$784,784	14.00%	14.00%	\$784,784	\$784,784	14.00%	14.00%	\$784,784			
Soft Costs	41,500	\$523,100	\$10,613 / Unit	\$1,103,727	\$1,103,727	\$10,613 / Unit	\$523,100	\$41,500	0.0%	\$0		
Financing	125,000	\$189,268	\$14,797 / Unit	\$1,538,939	\$1,538,939	\$14,797 / Unit	\$189,268	\$125,000	0.0%	\$0		
Developer Fee	\$1,890,975	\$1,065,413	15.00%	15.13%	\$2,956,388	\$2,956,388	15.13%	15.00%	\$1,065,413	\$1,890,975	0.0%	\$0
Reserves			4 Months	\$470,000	\$470,000	4 Months			0.0%	\$0		
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$14,497,475	\$8,168,165	\$247,325 / Unit	\$25,721,781	\$25,721,781	\$247,325 / Unit	\$8,168,165	\$14,497,475	0.0%	\$0	
Acquisition Cost	\$0			\$0								
Contingency		\$0		\$0								
Contractor's Fee		\$0		\$0								
Financing Cost		\$0		\$0								
Developer Fee	\$0	(\$0)		(\$0)								
Reserves				\$0								
ADJUSTED BASIS / COST		\$14,497,475	\$8,168,164	\$247,325/unit	\$25,721,781	\$25,721,781	\$247,325/unit	\$8,168,165	\$14,497,475	0.0%	(\$0)	
TOTAL HOUSING DEVELOPMENT COSTS BASED ON 3RD PARTY SCR/CNA					\$25,721,781							

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS
<i>Oso Bay Apartments, Corpus Christi, TDHCA Bonds/4% HTC #20620</i>

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$14,497,475	\$8,168,164	\$14,497,475	\$8,168,165
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$14,497,475	\$8,168,164	\$14,497,475	\$8,168,165
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$14,497,475	\$10,618,614	\$14,497,475	\$10,618,614
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	\$14,497,475	\$10,618,614	\$14,497,475	\$10,618,614
Applicable Percentage	3.07%	4.00%	3.07%	4.00%
ANNUAL CREDIT ON BASIS	\$445,072	\$424,745	\$445,072	\$424,745
CREDITS ON QUALIFIED BASIS	\$869,817		\$869,817	

	ANNUAL CREDIT CALCULATION BASED ON TDHCA BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9349	Variance to Request	
Method	Annual Credits	Proceeds	Credit Allocation	Credits	Proceeds
Eligible Basis	\$869,817	\$8,131,976	----	----	----
Needed to Fill Gap	\$995,942	\$9,311,123	----	----	----
Applicant Request	\$869,817	\$8,131,976	\$869,817	\$0	\$0

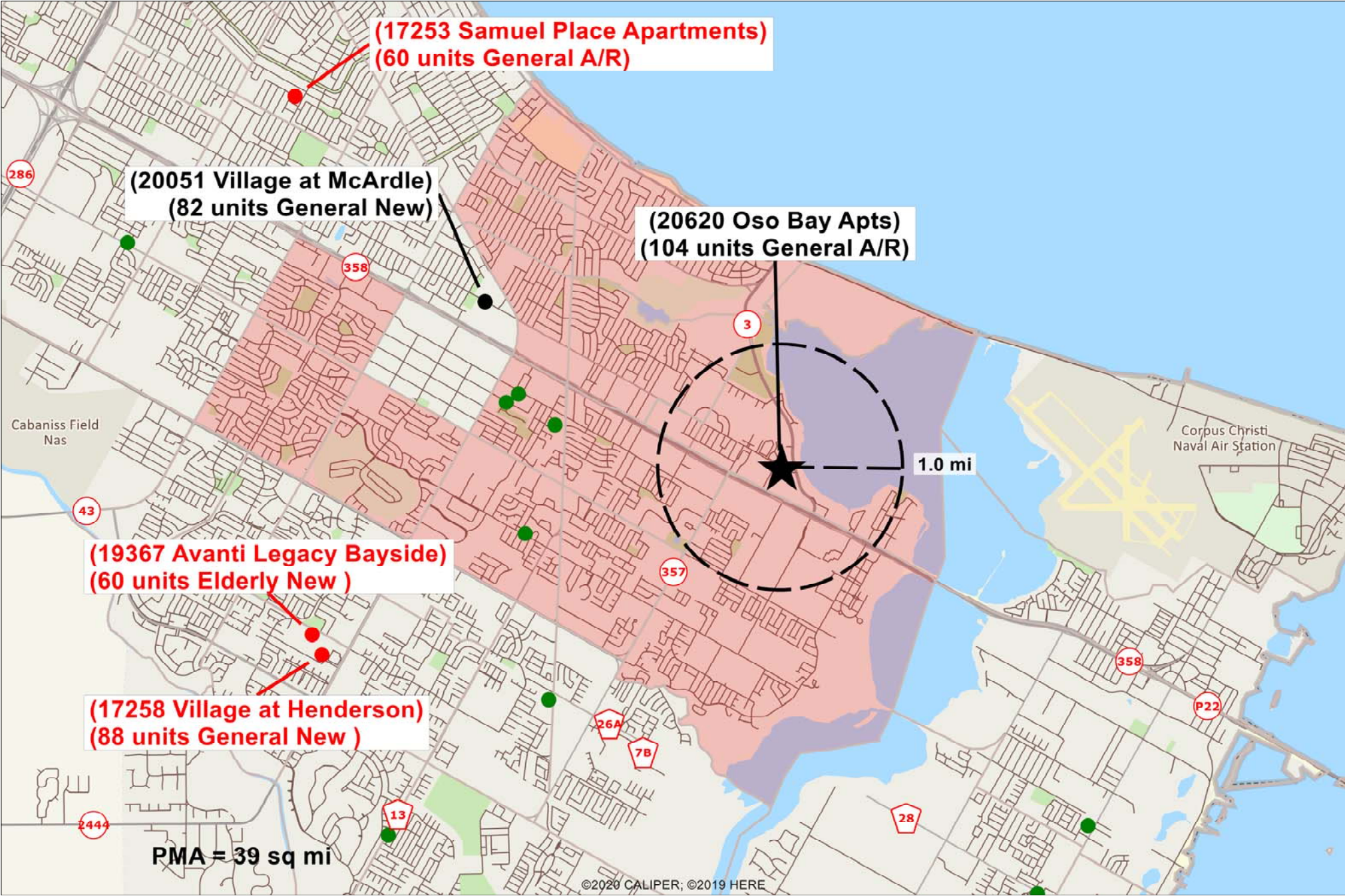
50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$14,000,000		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	Applicant	TDHCA		66.6%	66.6%
Land Cost	\$760,000	\$760,000			
Depreciable Bldg Cost	\$20,248,379	\$20,248,379			
Aggregate Basis for 50% Test	\$21,008,379	\$21,008,379			
			amount aggregate basis can increase before 50% test fails	\$6,991,621 33.3%	\$6,991,621 33.3%

Long-Term Pro Forma

Oso Bay Apartments, Corpus Christi, TDHCA Bonds/4% HTC #20620

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$1,566,394	\$1,597,722	\$1,629,677	\$1,662,270	\$1,695,515	\$1,871,986	\$2,066,824	\$2,281,941	\$2,519,447	\$2,781,673	\$3,071,192	\$3,390,844
TOTAL EXPENSES	3.00%	\$652,970	\$671,932	\$691,451	\$711,543	\$732,224	\$845,105	\$975,576	\$1,126,396	\$1,300,764	\$1,502,380	\$1,735,529	\$2,005,173
NET OPERATING INCOME ("NOI")		\$913,425	\$925,790	\$938,226	\$950,727	\$963,291	\$1,026,881	\$1,091,248	\$1,155,544	\$1,218,683	\$1,279,293	\$1,335,663	\$1,385,670
EXPENSE/INCOME RATIO		41.7%	42.1%	42.4%	42.8%	43.2%	45.1%	47.2%	49.4%	51.6%	54.0%	56.5%	59.1%
MUST -PAY DEBT SERVICE													
TOTAL DEBT SERVICE		\$740,919	\$740,142	\$739,343	\$738,521	\$737,675	\$733,066	\$727,751	\$721,623	\$714,557	\$706,411	\$697,019	\$686,191
DEBT COVERAGE RATIO		1.23	1.25	1.27	1.29	1.31	1.40	1.50	1.60	1.71	1.81	1.92	2.02
ANNUAL CASH FLOW		\$172,506	\$185,648	\$198,882	\$212,206	\$225,616	\$293,815	\$363,498	\$433,922	\$504,125	\$572,882	\$638,643	\$699,480
Deferred Developer Fee Balance		\$1,006,641	\$820,994	\$622,111	\$409,905	\$184,289	\$0	\$0	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$0	\$0	\$1,147,672	\$2,825,337	\$4,853,976	\$7,234,507	\$9,962,264	\$13,025,511	\$16,403,647

20620 Osu Bay Apartments PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.

Texas Department of Housing & Community

**Moderator: Teresa Morales
December 3, 2020
2:57 pm CT**

Operator: This conference is being recorded.

Woman 1: This is the AT&T Operator. Your recorder has been added to the call.

Teresa Morales: Good afternoon. This is Teresa Morales with the Texas Department of Housing & Community Affairs and this is the conference call for the Public Hearing with respect to Oso Bay Apartments. We'll give folks another few minutes to dial in. We'll get started in about another minute or so.

Good afternoon. This is Teresa Morales with the Texas Department of Housing & Community Affairs. And the purpose of this conference call is to conduct a Public Hearing for the Proposed Oso Bay Apartments. To give you some idea as far as format goes, there is a brief speech that I will need to read for purposes of meeting the Internal Revenue Code. And then at the conclusion of that speech, I will open up the lines for anyone who wishes to make public comment with respect to this proposed development.

I would now like to proceed with the Public Hearing. Let the record show that it is 3:02 pm on Thursday, December 3, 2020 and we are conducting a Public

Hearing on behalf of the Texas Department of Housing & Community Affairs with respect to an issue of a tax-exempt, multi-family revenue bond for a residential rental community. This hearing is required by the Internal Revenue Code. The sole purpose of this hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development and the proposed bond issue.

No decisions regarding the development will be made at this hearing. The Department's Board is scheduled to meet to consider the transaction on January 14, 2021. In addition to providing your comments at this hearing, the public is also invited to provide comment directly to the Board at any of their meetings.

The bonds will be issued as tax-exempt, multi-family revenue bonds in the aggregate principal amount not to exceed \$14 million and taxable bonds, if necessary, in an amount to be determined and issued in one or more series by the Texas Department of Housing & Community Affairs, the issuer. The proceeds of the bonds will be loaned to Oso Bay Apartments, LLC or a related person or affiliate entity thereof to finance a portion of the cost of acquiring, rehabbing, and equipping a multi-family rental housing community described as follows:

A 104-unit multi-family residential rental development to be located on approximately 6.99 acres of land located at 7502 McArdle Road, Corpus Christi, Nueces County, Texas 78412. The proposed multi-family rental housing community will be initially owned and operated by the borrower or a related person or affiliate thereof.

I would not like to open the lines for public comment. If there is anyone who would like to make...

Operator: All participants are now in listen-only mode.

All participants are now in interactive talk mode.

Teresa Morales: The lines are now open if there is anyone who would like to make a public comment with respect to the proposed Oso Bay Apartments. This would be your opportunity to do so. Let the record show that there is no one who wishes to provide any public comment with respect to the proposed development. Therefore, the meeting is now adjourned, and the time is 3:05 pm. Thank you.

Operator: We're sorry, your conference is ending now. Please hang up.

END

8a

PULLED FROM THE AGENDA

8b

PULLED FROM THE AGENDA

8c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
JANUARY 14, 2021

Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

RECOMMENDED ACTION

WHEREAS, two applications as further detailed below were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

WHEREAS, the Executive Award and Review Advisory Committee (EARAC) considered the program requirements, underwriting requirements and compliance history associated with each application listed herein; and

WHEREAS, EARAC recommends each of the two applications for an award of 4% Housing Tax Credits, in the specific amounts noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

NOW, therefore, it is hereby

RESOLVED, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any EARAC conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting.

BACKGROUND

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs that can possibly be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2020 calendar year, the state received approximately \$3 billion in Private Activity Bond authority, of which approximately \$800 million is reserved for multifamily housing until August 15th of each year. After such date, there may be more Private Activity Bond volume cap that goes towards multifamily housing. The collapse occurred on August 17, 2020 (given that the 15th was a weekend), and there was approximately \$1.5 billion in applications requesting volume cap, with approximately \$1.3 billion of those requests being for multifamily. There was approximately \$370 million in unreserved volume cap that collapsed, leaving approximately \$900 million unreserved and waiting for volume cap to be released

through currently reserved applications that were withdrawn. The last day to issue a reservation for the 2020 program year was November 15th and there was approximately \$135M in multifamily requests that were not reserved.

Individual projects receive a Certification of Reservation (Reservation) from the BRB that allows for a statutory 180-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must complete the Department's review process, the bond issuer's process, and the Attorney General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year. The year from which the Reservation is issued is what determines the Qualified Allocation Plan (QAP) to which the application must adhere. Included in this Board presentation as Exhibit B is a list of the 4% HTC applications staff has processed thus far for 2020. The list reflects all applications received and includes a column that denotes the applications' status, specifically, those that have already closed, have been approved by the Board, are active and currently under review, and those that are pre-applications that will utilize the Department as the bond issuer and an HTC application will be forthcoming.

Moreover, Exhibit C is a list of 4% HTC applications that have been submitted thus far for 2021 and reflect Reservations that will be coming from the 2021 Private Activity Bond ceiling and are those applications that participated in the 2021 Bond Lottery and will be receiving Reservations in January.

The Reservations from the BRB for the developments described herein were issued under the Priority 3 designation unless noted otherwise, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated below in their respective summaries.

20493 The Ridge at Lancaster

The development entails the new construction of 300 units for the general population to be located at 5703 South Lancaster Road in Dallas, Dallas County. The City of Dallas Housing Finance Corporation is serving as the bond issuer. The income averaging minimum set-aside has been elected and the application reflects that 270 of the units will be rent and income restricted at 60% of AMFI and 30 units will be leased at market rate. While the application was initially submitted with 100% of the units at 60% of AMFI, the applicant notified the Department that the market rate units were added as a condition of the zoning approval, which was received from the City of Dallas on October 28, 2020.

Recommended HTC Amount: \$2,707,319

20703 Cove in Odessa

Cove in Odessa is a proposed new construction of 200 units to serve the elderly population, as defined by HUD as one individual in the household 62 years of age or older, but including otherwise qualified households with children, located on the northeast side of San Antonio Street and Brownstone Road in

Odessa, Midland County. The income averaging minimum set-aside has been elected and the application reflects that ten units will be rent and income restricted at 30% of AMFI, ten units will be rent and income restricted at 40% of AMFI, 20 units will be rent and income restricted at 50% of AMFI, 140 units will be rent and income restricted at 60% of AMFI, and 20 units will be rent and income restricted at 70% of AMFI. The Odessa Housing Finance Corporation is serving as the bond issuer.

Recommended HTC Amount: \$1,598,402

EXHIBIT A
Previous Participation Results

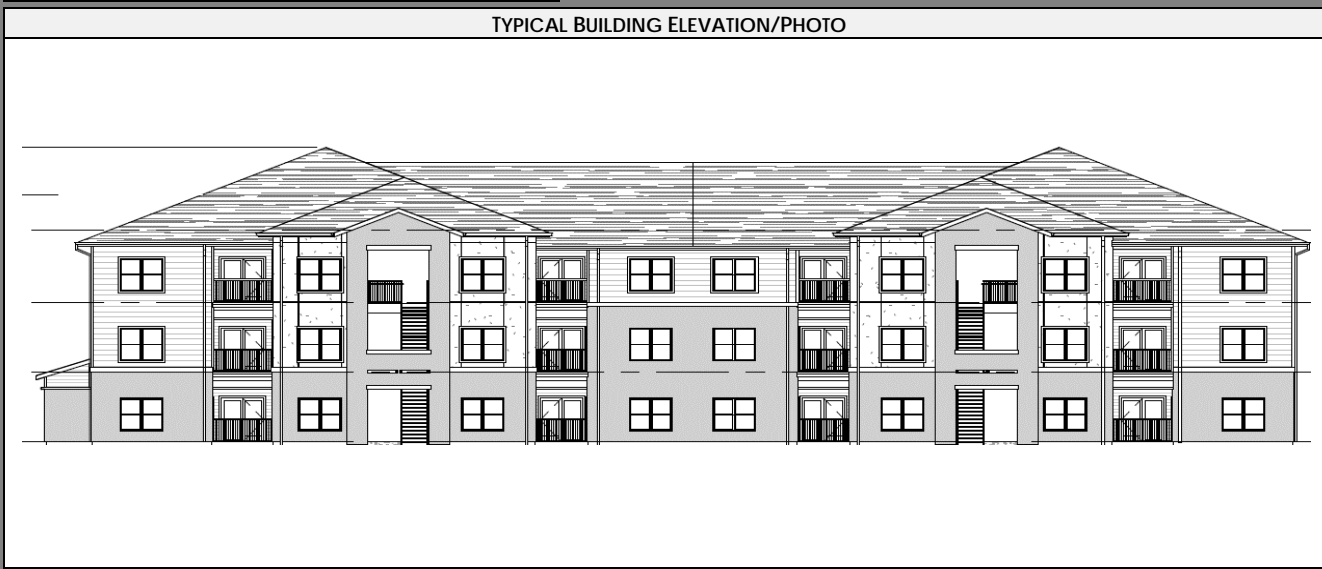
Application Number	Development Name	Category	PPR Conditions
20493	The Ridge at Lancaster	2	N/A
20703	Cove in Odessa	1	N/A

20493 The Ridge at Lancaster - Application Summary

PROPERTY IDENTIFICATION	
Application #	20493
Development	The Ridge at Lancaster
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

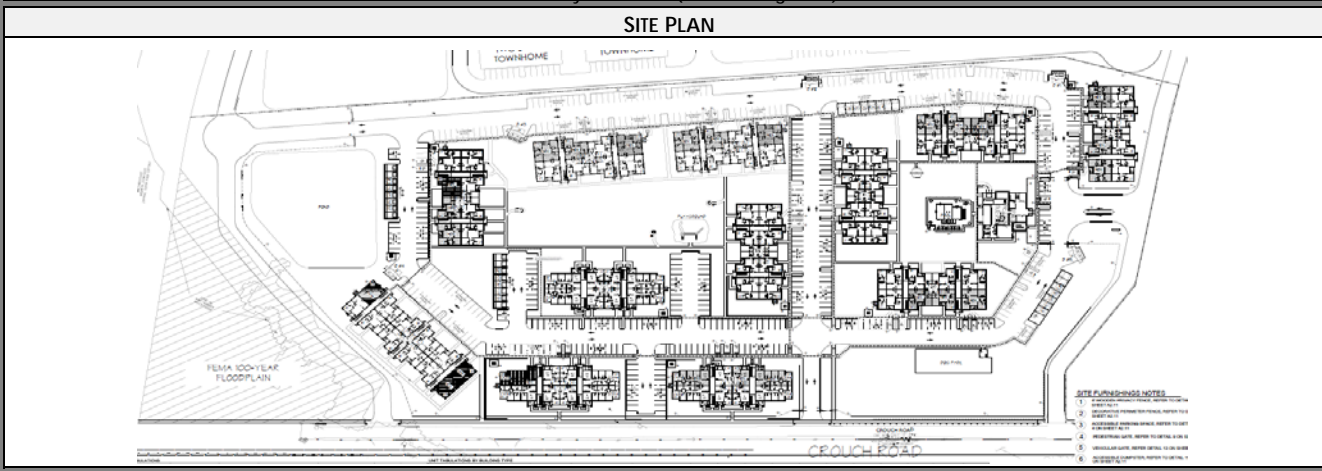
RECOMMENDATION					
TDHCA Program	Request	Recommended			
LIHTC (4% Credit)	\$2,707,319	\$2,707,319	\$9,024/Unit	\$0.87	

KEY PRINCIPALS / SPONSOR		
LDG Development, LLC Justin Hartz Jason Trevino Dallas Housing Finance Corporation		
Related Parties	Contractor - Yes	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	48	16%	30%	-	0%
2	120	40%	40%	-	0%
3	108	36%	50%	-	0%
4	24	8%	60%	270	90%
			70%	-	0%
			80%	-	0%
			MR	30	10%
TOTAL	300	100%	TOTAL	300	100%

PRO FORMA FEASIBILITY INDICATORS					
Pro Forma Underwritten			Applicant's Pro Forma		
Debt Coverage	1.15		Expense Ratio	34.9%	
Breakeven Occ.	84.6%		Breakeven Rent	\$1,064	
Average Rent	\$1,166		B/E Rent Margin	\$102	
Property Taxes	Exempt		Exemption/PILOT	100%	
Total Expense	\$4,588/unit		Controllable	\$3,275/unit	



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	6.0%		
Highest Unit Capture Rate	24%	3 BR/60%	96
Dominant Unit Cap. Rate	24%	3 BR/60%	96
Premiums (↑60% Rents)	Yes		\$66/Avg.
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,162 SF	Density	14.6/acre
Acquisition		\$11K/unit	\$3,200K
Building Cost	\$79.00/SF	\$92K/unit	\$27,537K
Hard Cost		\$125K/unit	\$37,353K
Total Cost		\$225K/unit	\$67,546K
Developer Fee	\$7,548K	(21% Deferred)	Paid Year: 5
Contractor Fee	\$4,891K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Citi	30/35	3.80%	\$43,677,000	1.12						Enterprise	\$23,553,674	
										LDG Multifamily, LLC	\$1,615,128	
TOTAL DEBT (Must Pay)			\$42,377,000		CASH FLOW DEBT / GRANTS				\$0		TOTAL EQUITY SOURCES	\$25,168,802
TOTAL DEBT SOURCES											\$42,377,000	
TOTAL CAPITALIZATION											\$67,545,802	

CONDITIONS

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	Dallas Housing Finance Corporation
Expiration Date	2/14/2021
Bond Amount	\$50,000,000
BRB Priority	Priority 3
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	84.6%

RISK PROFILE

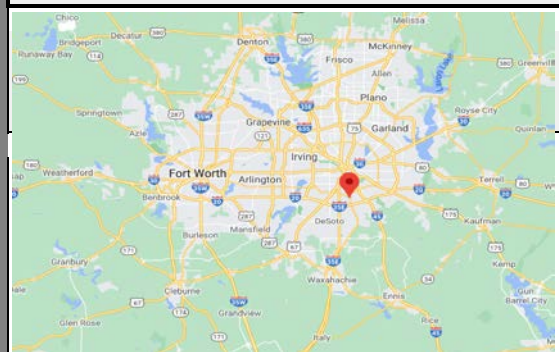
STRENGTHS/MITIGATING FACTORS

- Experienced Developer
- Overall Feasibility Indicators

WEAKNESSES/RISKS

- Feasibility dependent on 3.5% Management Fee
- Feasibility dependent on Property Tax Exemption

AREA MAP



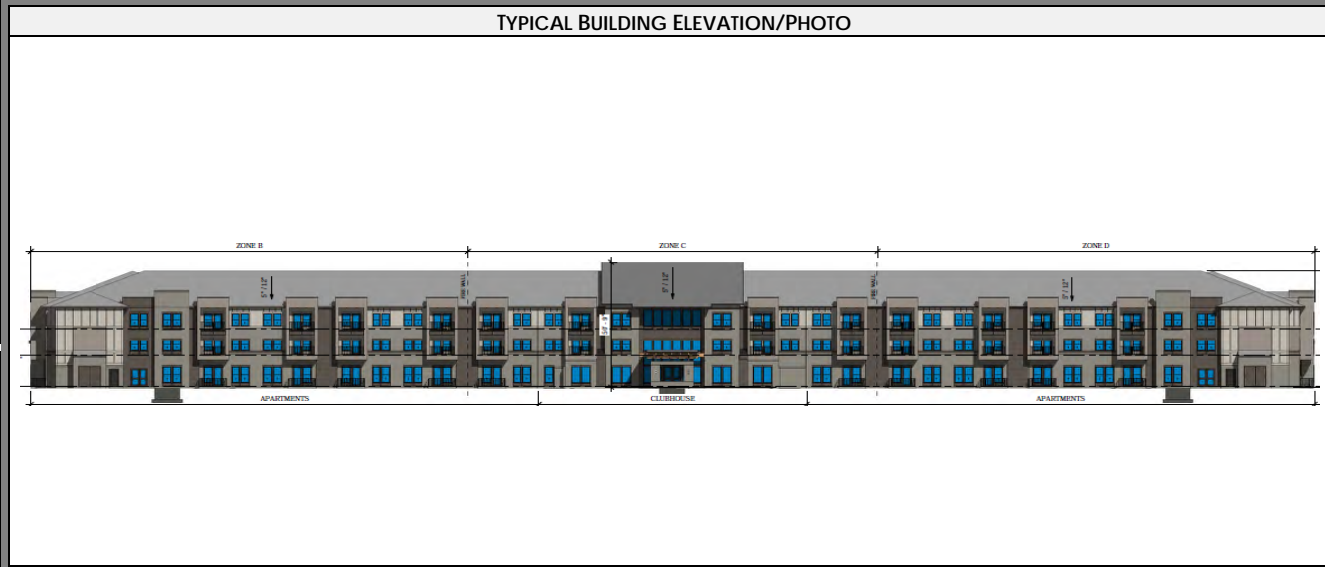
AERIAL PHOTOGRAPH(S)



20703 Cove in Odessa - Application Summary

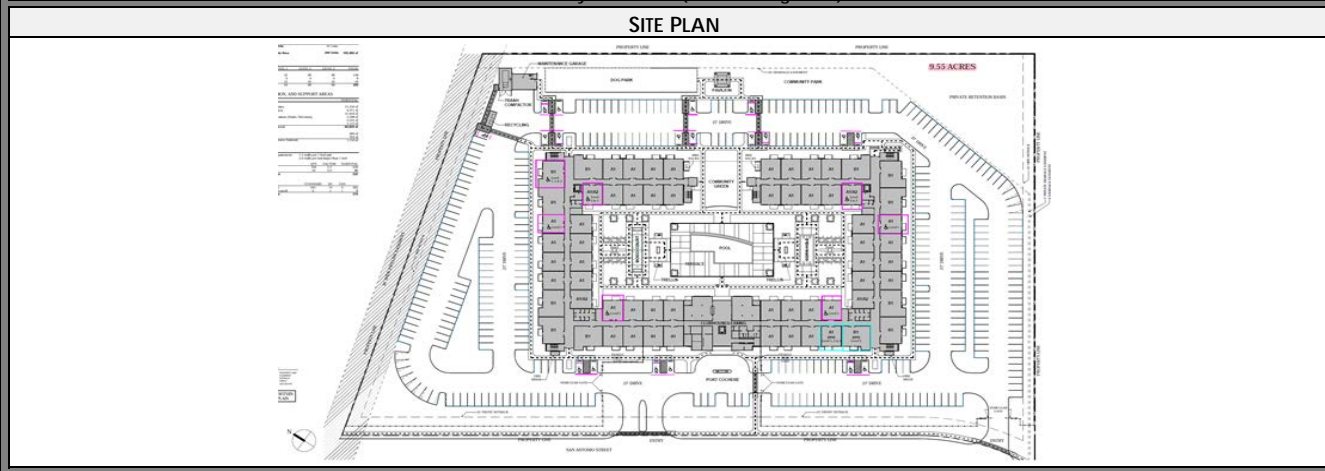
PROPERTY IDENTIFICATION		RECOMMENDATION				
Application #	20703	TDHCA Program	Request	Recommended		
Development	Cove in Odessa	LIHTC (4% Credit)	\$1,605,578	\$1,598,402	\$7,992/Unit	\$0.82
City / County	Odessa / Midland					
Region/Area	12 / Urban					
Population	Elderly Preference					
Set-Aside	General					
Activity	New Construction					

KEY PRINCIPALS / SPONSOR		
Cardinal MF, LLC Bryan Brown Odessa Housing Finance Corporation Jill Miller Streamline Advisory Partners - Consultant		
Related Parties	Contractor - No	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	156	78%	30%	10	5%
2	44	22%	40%	10	5%
3	-	0%	50%	20	10%
4	-	0%	60%	140	70%
			70%	20	10%
			80%	-	0%
			MR	-	0%
TOTAL	200	100%	TOTAL	200	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.15	Expense Ratio	45.3%
Breakeven Occ.	85.8%	Breakeven Rent	\$877
Average Rent	\$947	B/E Rent Margin	\$70
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,812/unit	Controllable	\$3,568/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			3.4%
Highest Unit Capture Rate	10%	1 BR/60%	131
Dominant Unit Cap. Rate	10%	1 BR/60%	131
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	797 SF	Density	20.9/acre
Acquisition		\$09K/unit	\$1,800K
Building Cost	\$105.58/SF	\$84K/unit	\$16,840K
Hard Cost		\$105K/unit	\$20,942K
Total Cost		\$173K/unit	\$34,667K
Developer Fee	\$4,027K	(17% Deferred)	Paid Year: 4
Contractor Fee	\$2,526K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Gershman Investment Corp.	40/40	3.40%	\$21,470,826	1.12						Affordable Housing Partners, Inc.	\$13,104,275	
										Deferred Developer Fee	\$691,490	
										TOTAL EQUITY SOURCES	\$13,795,765	
										TOTAL DEBT SOURCES	\$20,870,826	
TOTAL DEBT (Must Pay)			\$20,870,826		CASH FLOW DEBT / GRANTS				\$0		TOTAL CAPITALIZATION	\$34,666,591

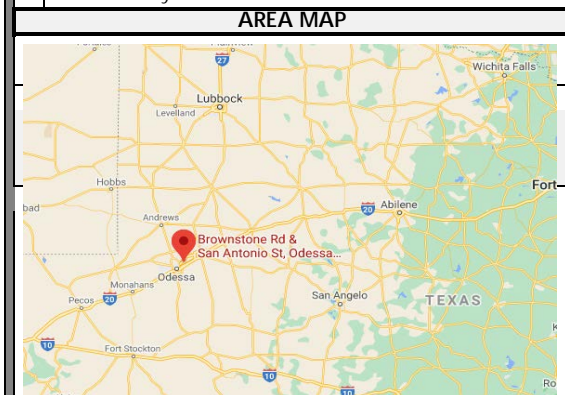
CONDITIONS

- Receipt and acceptance by Cost Certification:
- Certification that the boundary easement with respect to proposed building locations to ensure siting of structures complies with HUD MAP guidelines.

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	Odessa Housing Finance Corp.
Expiration Date	2/28/2021
Bond Amount	\$30,000,000
BRB Priority	3
Bond Structure	FHA 221(d)(4)
% Financed with Tax-Exempt Bonds	68.0%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
<input type="checkbox"/>	Low expense ratio/tax exemption
<input type="checkbox"/>	Overall Feasibility Indicators
<input type="checkbox"/>	Range of qualifying incomes
WEAKNESSES/RISKS	
<input type="checkbox"/>	Many affordable units under construction in Midland area; market risk in Midland
<input type="checkbox"/>	Large PMA; assumes demand from lower income Ector County



AERIAL PHOTOGRAPH(S)

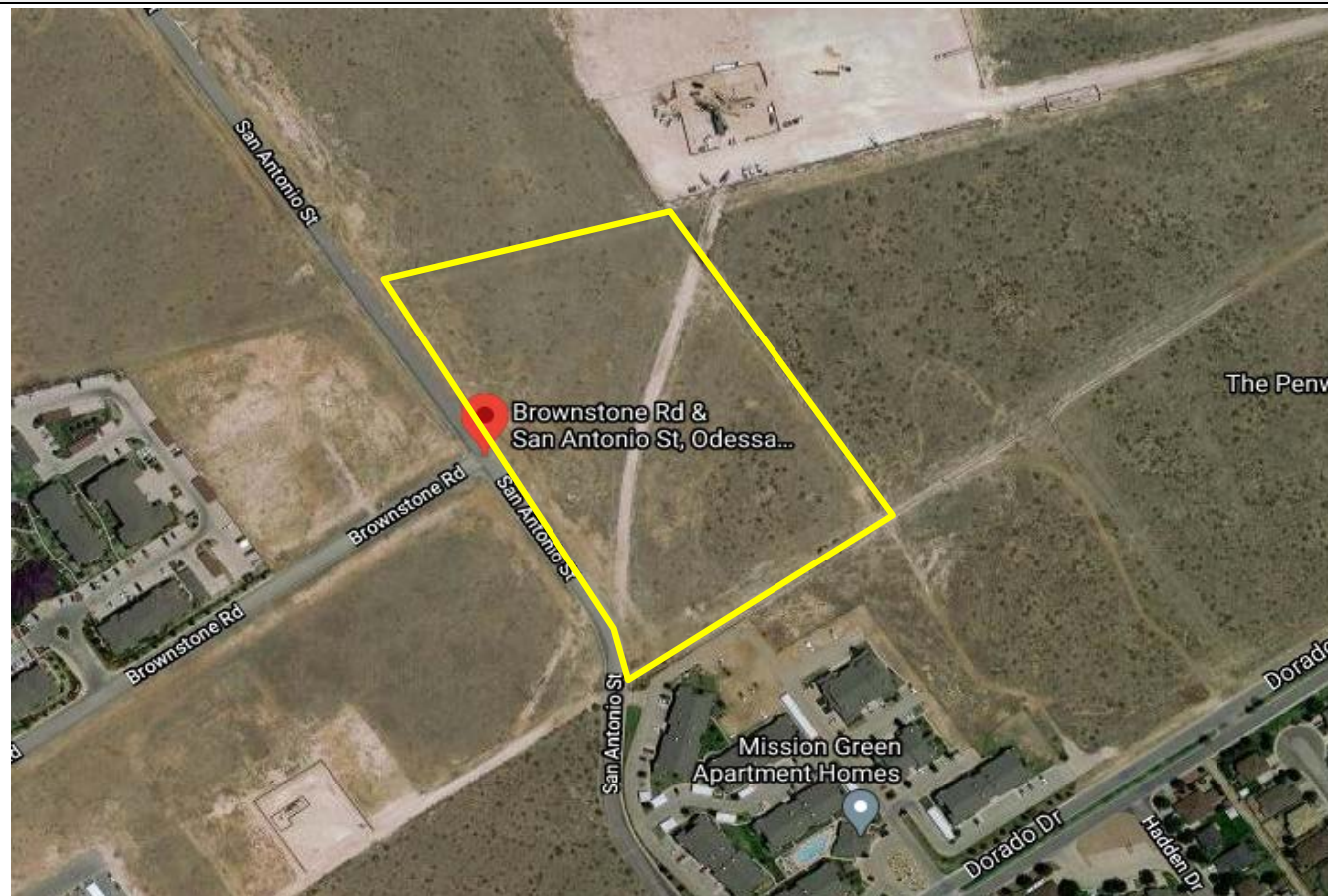


Exhibit B



4% (Non-Competitive) Housing Tax Credit Program 2020 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
20451	19440	Ventura at Parmer Lane	Austin ETJ	10/10/2019	Closed	216	216	\$ 34,000,000	\$ 2,189,841	\$ 2,189,841
20600		Oaks on Clark	San Antonio	4/23/2020	Closed	80	80	\$ 12,000,000	\$ 607,290	\$ 597,284
20605	19608	Reserve at San Marcos	San Marcos	3/26/2020	Closed	376	320	\$ 41,000,000	\$ 1,857,733	\$ 1,857,733
20448	18458; 19431	Scharbauer Flats	Midland	2/20/2020	Closed	300	300	\$ 40,000,000	\$ 2,895,615	\$ 2,895,615
20410		Traders Flats	San Antonio	5/21/2020	Closed	324	324	\$ 38,000,000	\$ 1,863,629	\$ 1,863,629
20465	19428	Riverstone	San Marcos	11/7/2019	Closed	336	336	\$ 50,000,000	\$ 2,349,942	\$ 2,349,942
20414		The Arbor at Wayforest	Houston	3/26/2020	Closed	192	192	\$ 20,000,000	\$ 1,262,807	\$ 1,262,807
20420		Pan American	San Antonio	4/23/2020	Closed	100	100	\$ 15,000,000	\$ 674,355	\$ 674,355
20429	19452	Las Palmas	La Feria	1/16/2020	Closed	36	35	\$39,120,000 (portfolio)	\$ 87,983	\$ 87,983
20422	19445	Brush Country Cottages	Dilley	1/16/2020	Closed	28	28	-	\$ 89,069	\$ 89,069
20423	19446	Chula Vista	San Diego	1/16/2020	Closed	44	44	-	\$ 149,982	\$ 149,982
20424	19447	Cielo Lindo	Edcouch	1/16/2020	Closed	34	34	-	\$ 101,022	\$ 101,022
20425	19448	La Estancia	Sebastian	1/16/2020	Closed	32	32	-	\$ 101,210	\$ 101,210
20426	19449	La Posada I & II	Ela	1/16/2020	Closed	74	74	-	\$ 208,076	\$ 208,076
20427	19450	La Reina	La Villa	1/16/2020	Closed	30	30	-	\$ 65,586	\$ 65,586
20428	19451	La Sombra	Donna	1/16/2020	Closed	50	50	-	\$ 118,354	\$ 118,354
20430	19453	Leuty Avenue	Justin	1/16/2020	Closed	24	24	-	\$ 80,261	\$ 80,261
20432	19455	Los Naranjos	Alton	1/16/2020	Closed	30	30	-	\$ 67,810	\$ 67,810
20433	19456	Oak Haven	Donna	1/16/2020	Closed	24	24	-	\$ 63,090	\$ 63,090
20434	19457	Raintree	Alamo	1/16/2020	Closed	32	32	-	\$ 82,925	\$ 82,925
20435	19458	Seagraves Gardens	Seagraves	1/16/2020	Closed	32	32	-	\$ 91,709	\$ 91,709
20436	19459	Silver Trail	Menard	1/16/2020	Closed	24	24	-	\$ 67,091	\$ 67,091
20437	19460	The Village	Tomball	1/16/2020	Closed	64	64	-	\$ 172,768	\$ 172,768
20438	19461	Valley View	Valley View	1/16/2020	Closed	24	24	-	\$ 78,834	\$ 78,834
20439	19462	Villa Vallarta	Rio Grande City	1/16/2020	Closed	40	40	-	\$ 122,529	\$ 122,529
20440	19463	Vista Verde	Cotulla	1/16/2020	Closed	24	24	-	\$ 82,514	\$ 82,514
20441	19464	Willowick	Gainesville	1/16/2020	Closed	60	60	-	\$ 171,018	\$ 171,018
20442	19465	Windmill	Giddings	1/16/2020	Closed	28	28	-	\$ 77,926	\$ 77,926
20443	19466	Windwood I & II	Kingsland	1/16/2020	Closed	68	68	-	\$ 151,618	\$ 151,618
20407		New Hope Housing Avenue J	Houston	2/20/2020	Closed	100	100	\$ 23,000,000	\$ 1,290,647	\$ 1,290,467
20401		Palladium Port Aransas	Port Aransas	4/23/2020	Closed	183	165	\$ 19,000,000	\$ 1,155,074	\$ 1,155,074
20408		Vi Collina	Austin	4/23/2020	Closed	170	170	\$ 24,000,000	\$ 1,340,220	\$ 1,340,220
20611	20402	333 Holly	The Woodlands	5/21/2020	Closed	332	332	\$ 36,800,000	\$ 2,484,301	\$ 2,484,301
20612	20403	The Pines	The Woodlands	5/21/2020	Closed	152	152	\$ 22,000,000	\$ 1,469,273	\$ 1,469,273
20604	19468	The Walzem	San Antonio	5/21/2020	Closed	200	200	\$ 20,000,000	\$ 1,326,147	\$ 1,280,892
20603	19612	Scott Street Lofts	Houston	5/21/2020	Closed	123	98	\$ 18,000,000	\$ 741,693	\$ 711,964
20416		The Estates at Owen Tech	Austin	5/21/2020	Closed	174	174	\$ 20,000,000	\$ 1,213,610	\$ 1,213,610
20409		McKinney Flats	McKinney	3/26/2020	Closed	205	205	\$ 32,000,000	\$ 1,393,849	\$ 1,393,849
20404		Tampico Apartments	San Antonio	3/26/2020	Closed	200	136	\$ 23,000,000	\$ 739,670	\$ 739,670
20418		Park at 38 Thirty	San Antonio	3/26/2020	Closed	196	196	\$ 25,000,000	\$ 1,027,837	\$ 1,027,837
20412		1604 Lofts Apartments	San Antonio	5/21/2020	Closed	324	324	\$ 38,000,000	\$ 1,895,702	\$ 1,895,702
20452		Enclave at Lake Pointe	Houston	6/25/2020	Closed	132	132	\$ 14,200,000	\$ 723,725	\$ 723,725
20458		Kinwood Apartments	McKinney	6/25/2020	Closed	200	200	\$ 30,000,000	\$ 1,245,289	\$ 1,240,383
20405		Gala at Fate	Fate	5/21/2020	Closed	185	185	\$ 25,000,000	\$ 1,166,285	\$ 1,166,285
20421	19442	Richcrest Apartments	Houston	3/26/2020	Closed	288	286	\$ 30,000,000	\$ 1,974,441	\$ 1,974,441
20456		The Hollows	Channelview CDP	7/23/2020	Closed	192	192	\$ 20,000,000	\$ 1,043,287	\$ 1,043,287
20461		Cascade at Onion Creek	Austin	6/25/2020	Closed	264	264	\$ 35,000,000	\$ 1,431,091	\$ 1,422,168
20609		Pecan Grove	Seguin	7/23/2020	Closed	198	198	\$ 26,000,000	\$ 1,353,160	\$ 1,353,160
20447	19472	Franklin Park	Austin	5/21/2020	Closed	163	163	\$ 15,000,000	\$ 737,361	\$ 737,361
20450		Mira Vista	San Antonio	5/21/2020	Closed	312	312	\$ 28,000,000	\$ 1,783,385	\$ 1,783,385
20419		Woodway Village	Austin	6/25/2020	Closed	160	160	\$ 30,000,000	\$ 1,196,513	\$ 1,168,103
20457		Pinewood Apartments	Houston	6/25/2020	Closed	240	240	\$ 30,000,000	\$ 1,174,359	\$ 1,106,302
20459		Spring Villas	Austin	6/25/2020	Closed	304	302	\$ 45,000,000	\$ 2,295,642	\$ 2,295,524
20602	03438	The Vermillion	Houston	7/23/2020	Closed	260	260	\$ 29,000,000	\$ 1,372,549	\$ 1,375,437
20467		Greenline North	San Antonio	7/23/2020	Closed	292	292	\$ 50,000,000	\$ 1,930,015	\$ 1,930,015
20466		Blue Water Gardens	Hereford	9/3/2020	Closed	132	132	\$ 16,750,000	\$ 738,553	\$ 738,553
TBD	19438	Legacy Senior	Round Rock	11/7/2019	Closed	157	157	\$ 20,000,000	\$ 732,029	\$ 732,029
TBD	18456; 19470	Jackie Robinson Apartments	El Paso	12/12/2019	Closed	186	186	\$ 30,000,000	\$ 1,290,195	\$ 1,290,195
20601	19611	Granada Terrace Apartments	Houston	4/23/2020	Closed	156	156	\$ 12,000,000	\$ 882,061	\$ 882,061
20415		Avenue on 34th Apartments	Houston	9/3/2020	Closed	70	56	\$ 12,000,000	\$ 333,845	\$ 333,845
20478		Vera at Odessa	Odessa	9/3/2020	Closed	288	288	\$ 35,000,000	\$ 1,389,149	\$ 1,389,149
20606	19610	Fish Pond at Corpus Christi	Corpus Christi	9/3/2020	Closed	112	111	\$ 10,000,000	\$ 682,849	\$ 682,849
20471		Northwood	Houston ETJ	7/23/2020	Closed	288	288	\$ 40,000,000	\$ 2,378,498	\$ 2,378,498
20411		Kitty Hawk Flats Apartments	San Antonio	9/3/2020	Closed	239	239	\$ 28,000,000	\$ 1,359,994	\$ 1,359,994
20454		South Terrace	Waco	9/3/2020	Closed	250	250	\$ 25,000,000	\$ 1,452,219	\$ 1,445,826
20475		Northview Apartments	San Antonio	9/3/2020	Closed	156	156	\$ 25,000,000	\$ 1,270,215	\$ 1,270,215
20483	02412	Shady Oaks	Fort Worth	9/3/2020	Closed	138	138	\$ 15,000,000	\$ 654,862	\$ 654,862
20480		Bridge at Turtle Creek	Austin	10/8/2020	Closed	307	307	\$ 44,000,000	\$ 2,332,344	\$ 2,332,344
20449	19469	EMLI at Pecan Creek	Aubrey	4/23/2020	Closed	254	254	\$ 30,000,000	\$ 1,484,333	\$ 1,413,138
20613		Riverside Senior	Fort Worth	12/10/2020	Closed	264	264	\$ 40,000,000	\$ 1,913,049	\$ 1,913,049
20400		Palladium West Francis	Midland	5/21/2020	Closed	240	188	\$ 25,000,000	\$ 1,596,885	\$ 1,596,885
20406		Gala at Central Park Apartments	Hurst	6/25/2020	Closed	94	94	\$ 15,000,000	\$ 486,783	\$ 486,783
20474		Canyon Pass	San Antonio	10/8/2020	Closed	264	264	\$ 35,000,000	\$ 2,003,601	\$ 2,003,601

20460	18423; 19400	Villas del San Xavier	San Marcos	12/12/2019	Approved	156	156	\$	25,000,000	\$	1,059,750	\$	1,059,750
20455		Redwood	San Marcos	10/8/2020	Approved	296	296	\$	50,000,000	\$	2,145,888	\$	2,145,888
20476		Grand Station Apartments	Austin	10/8/2020	Approved	216	216	\$	35,000,000	\$	1,380,252	\$	1,347,471
20462		Sunland County Apartments	Harlingen	11/5/2020	Approved	166	166	\$	20,000,000	\$	941,981	\$	941,981
20486		Old Manor Senior	Austin	11/5/2020	Approved	207	207	\$	30,000,000	\$	1,632,397	\$	1,632,397
20463		Trinity Oaks	Sulphur Springs	11/5/2020	Approved	48	48	\$	2,129,000	\$	159,653	\$	155,956
20489		Horizon Pointe	San Antonio	11/5/2020	Approved	312	312	\$	35,000,000	\$	2,045,672	\$	2,045,672
20464		Pine Terrace	Mount Pleasant	12/10/2020	Approved	76	76	\$	3,371,000	\$	193,440	\$	192,962
20488		Wildhorse Flats	Austin	12/10/2020	Approved	310	310	\$	50,000,000	\$	2,786,158	\$	2,781,346
20495		Fawn Ridge Apartments	The Woodlands	12/10/2020	Approved	119	118	\$	16,500,000	\$	733,463	\$	733,463
20491		Ridgecrest Terrace	Dallas	12/10/2020	Approved	250	250	\$	40,000,000	\$	1,790,582	\$	1,790,582
20494		La Cima	Austin	12/10/2020	Approved	260	260	\$	39,000,000	\$	1,772,256	\$	1,772,256
20498		Gala at Waxahachie	Waxahachie	12/10/2020	Approved	185	185	\$	25,000,000	\$	1,098,763	\$	1,098,763
20496		Marshall Apartments	Austin	12/10/2020	Approved	100	100	\$	16,500,000	\$	556,883	\$	556,883
20493		The Ridge at Lancaster	Dallas	1/14/2021	Approved	300	300	\$	50,000,000	\$	2,707,319	\$	2,707,319
20620		Oso Bay Apartments	Corpus Christi	1/14/2021	Approved	104	104	\$	14,000,000	\$	869,817	\$	869,817
20615		The Montage	San Antonio ETJ	1/14/2021	Approved	216	216	\$	35,000,000	\$	1,916,191	\$	1,914,402
20703		Cove in Odessa	Odessa	1/14/2021	Approved	200	200	\$	30,000,000	\$	1,605,578	\$	1,598,402
						15,391	15,155	\$	1,682,250,000	\$	99,815,219	\$	99,494,202
20490		2100 Memorial	Houston	2/11/2021	Active	197	159	\$	35,000,000	\$	1,640,803	\$	-
20497		The Oleanders at Broadway	Galveston	2/11/2021	Active	348	261	\$	51,757,648	\$	2,190,531	\$	-
20617	02469	Murdeux Villas	Dallas	2/11/2021	Active	302	280	\$	35,000,000	\$	17,294,118	\$	-
20623	04101	Bella Vista fka Pleasant Hill	Austin	2/11/2021	Active	100	100	\$	20,000,000	\$	874,194	\$	-
20624	534284	Crystal Falls fka Cedar Ridge	Leander	2/11/2021	Active	152	152	\$	18,000,000	\$	567,459	\$	-
20625	04147	Shiloh Village	Dallas	2/11/2021	Active	168	168	\$	25,000,000	\$	1,234,715	\$	-
20610		Terrace at Southern Oaks	Dallas	3/11/2021	Active	300	300	\$	45,000,000	\$	2,000,114	\$	-
20701		City Heights	Austin	2/11/2021	Active	179	179	\$	22,000,000	\$	1,351,046	\$	-
20707		Kallison Ranch	San Antonio	2/11/2021	Active	384	384	\$	50,000,000	\$	2,198,029	\$	-
20499		Legacy Senior Residences	Round Rock	2/11/2021	Active	199	199	\$	30,000,000	\$	954,815	\$	-
20704		Applewood Apartments	San Antonio	2/11/2021	Active	317	317	\$	35,000,000	\$	1,931,356	\$	-
20705		Sandpiper Cove	Galveston	2/11/2021	Active	192	192	\$	37,500,000	\$	1,326,832	\$	-
20709		Watson Road	San Antonio	3/11/2021	Active	348	348	\$	38,000,000	\$	2,017,186	\$	-
20708		Copernicus	San Antonio	3/11/2021	Active	318	318	\$	38,000,000	\$	1,832,870	\$	-
						3,504	3,357	\$	480,257,648	\$	37,414,068	\$	-
20417		St. Joe Apartments	Houston	3/19/2020	Withdrawn	307	307	\$	51,757,648	\$	4,596,000	\$	-
20468		Preserve at the Port	San Antonio	7/23/2020	Withdrawn	384	384	\$	37,000,000	\$	1,654,968	\$	-
20431	19454	Los Laureles	Edcouch	1/16/2020	Withdrawn	23	23	\$	-	\$	88,153	\$	88,153
20481		Echo East	San Antonio	9/3/2020	Withdrawn	192	192	\$	20,000,000	\$	1,306,258	\$	-
20413		Residences at Merritt Hill	Rowlett	5/21/2020	Withdrawn	260	260	\$	33,000,000	\$	1,888,671	\$	1,888,671
20473		Agave East	Austin ETJ	9/3/2020	Withdrawn	240	240	\$	35,000,000	\$	1,355,697	\$	1,355,697
20477		Sphinx at Throckmorton Villas	McKinney	10/8/2020	Withdrawn	220	216	\$	28,000,000	\$	1,670,582	\$	-
20444		Plano Kathryn Senior Living	Plano	6/25/2020	Withdrawn	252	252	\$	30,000,000	\$	1,774,750	\$	1,774,750
20479		The Oaks	Dallas	11/5/2020	Withdrawn	260	243	\$	35,000,000	\$	1,488,978	\$	-
20484		The Lantana	San Marcos	11/5/2020	Withdrawn	216	216	\$	26,000,000	\$	1,750,669	\$	-
20628		Mayhill Road	Denton	9/3/2020	Withdrawn	360	360	\$	30,000,000	\$	2,247,493	\$	-
20629		Residences at Merritt Hill	Rowlett	9/3/2020	Withdrawn	260	260	\$	50,000,000	\$	2,206,067	\$	-
20446	19432	St. Johns Square	San Antonio	3/26/2020	Withdrawn	252	54	\$	50,000,000	\$	473,449	\$	449,524
20482		W. Leo Daniels Towers	Houston	11/5/2020	Withdrawn	100	100	\$	15,000,000	\$	833,142	\$	-
20487		Springdale Manor Apartments	Austin	12/10/2020	Withdrawn	186	186	\$	20,000,000	\$	1,182,803	\$	-
20702		Cypress Creek Apartment Homes	Rowlett	1/14/2021	Withdrawn	234	187	\$	35,000,000	\$	1,224,185	\$	-
						3,746	3,480	\$	495,757,648	\$	25,741,865	\$	5,556,795
TOTAL*						18,895	18,512	\$	2,162,507,648	\$	137,229,287	\$	99,494,202

*Totals include Closed, Approved, and Active Status

Exhibit C



**4% (Non-Competitive) Housing Tax Credit Program
2021 Application Status Log**

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
21601	05044	Ridgewood fka Copperwood	The Woodlands	2/11/2021	Active	300	300	\$ 40,000,000	\$ 2,563,139	\$ -
21602	04108	Pineview fka Tamarac Pines	The Woodlands	2/11/2021	Active	300	300	\$ 34,000,000	\$ 2,360,422	\$ -
21613		The Citadel	Houston	4/8/2021	Active	74	67	\$ 15,000,000	\$ 914,051	\$ -
21606		Palladium Sorcey Park	Dallas	3/11/2021	Active	152	152	\$ 14,750,000	\$ 1,044,403	\$ -
21605		Palladium Simpson Stuart	Dallas	3/11/2021	Active	270	270	\$ 25,750,000	\$ 1,864,956	\$ -
21607		Caroline Lofts	Houston	3/11/2021	Active	119	80	\$ 20,000,000	\$ 570,279	\$ -
21600	94063	Corona Del Valle	El Paso	3/11/2021	Active	101	101	\$ 8,500,000	\$ 524,995	\$ -
21402		Belmont	Austin	3/11/2021	Active	146	146	\$ 30,000,000	\$ 977,084	\$ -
21406		Midpark Towers	Dallas	3/11/2021	Active	202	202	\$ 20,000,000	\$ 959,674	\$ -
21407		Espero Austin	Austin	3/11/2021	Active	171	171	\$ 20,000,000	\$ 1,043,522	\$ -
TOTAL*						1,835	1,789	228,000,000	12,822,525	-