Texas Department of Housing and Community Affairs
2019 9% Housing Tax Credit Pre-Application

Application Number: 19326
Submitted Date: 1/9/2019 10:11AM
Submitted By: Henry Flores

Contact Information

Primary Contact: Wayne Lowry
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McAllen, TX 78501
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Secondary Contact: Henry Flores
Phone: 512-914-0953
Email: hflores@madhousedevelopment.net

Development Information

Name of Proposed Entity: Sprague Senior Housing, LP
Development Name: Magnolia Estates
Development Type: New Construction
Secondary Type: None
Previous TDHCA #: None
Initial Construction Year: 0
Units Demolished: 0
Units Reconstructed: 0
# of Non-Contiguous Sites: 0
# of Census Tracts: 1
Target Population: Elderly
Development Address: +/- 6.47 acres on the southwest corner of W. Sprague St. and S. McColl Rd. approximately 800 feet west of the intersection at W. Sprague St. and S. McColl Rd.
Edinburg, TX 78539
ETJ?: N
County: Hidalgo
Region: 11
Rural/Urban: Urban
Census Tracts: 48215023904
Total LI Units: 100
Total MR Units: 0
Total Units: 100
HTC Request: $1,500,000.00
Pre-App Fee Due: $1,000.00
Has Fee already been submitted?: No
Name on Check: hflores@madhousedevelopment.net
Check Number: none
Set-Aside Election: none

Notifications

U.S. Representative: Vicente Gonzalez
State Senator: Juan Hinojosa
State Representative: Bobby Guerra
District: 15
District: 20
District: 41
School Superintendent: Dr. René Gutiérrez
School District: Edinburg Consolidated ISD
School District Address: 411 North 8th Ave
Edinburg, TX 78539

Presiding Officer of Board of Trustees: Robert Pena
Address: 411 North 8th Ave
Edinburg, TX 78539

Elected Officials:
- Richard Molina
- Jorge Salinas
- Gilbert Enriquez
- Homer Jasso Jr.
- David Torres
- Richard Cortez
- David Fuentes
- Eduardo Cantu
- Joe M. Flores
- Ellie Torres

Mayor
City Council Member
City Council Member
Mayor Pro Tem
County Judge
County Commissioner
County Commissioner
County Commissioner
County Commissioner

Neighborhood Organizations: None

Competitive Housing Tax Credit Selection Self-Score

Criteria Promoting Development of High Quality Housing
- Unit Sizes: 6
- Unit Features: 9
- Sponsor Characteristics: 2
- High Quality Housing Total: 17

Criteria to Serve and Support Texans Most in Need
- Income Levels of Tenants: 16
- Rent Levels of Tenants: 11
- Tenant Services: 10
- Opportunity Index: 7
- Underserved Area: 3
- Tenant Populations with Special Housing Needs: 2
- Proximity to the Urban Core: 0
- Serve and Support Texans Most in Need Total: 49

Criteria Promoting Community Support and Engagement
- Commitment of Development Funding by Local Political Subdivision: 1
- Declared Disaster Area: 10
- Community Support and Engagement Total: 11
Criteria Promoting Efficient Use of Limited Resources and Applicant Accountability

Financial Feasibility: 18
Cost of Development per Square Foot: 12
Pre-Application Participation: 6
Leveraging Private, State and Federal Resources: 3
Extended Affordability: 2
Historic Preservation: 0
Right of First Refusal: 1
Funding Request Amount: 1
Efficient Use of Limited Resources and Applicant Accountability Total: 43

Point Adjustment:
Total Applicant Self-Score: 120

Intent to Request Points for Items not Included in the Applicant’s Self-Score

Readiness to Proceed: 5 points
Government Support: 17 points
Quantifiable Community Participation: 4 points
Support from State Representative: 8 points
Input from Community Organizations: 4 points
Concerted Revitalization Plan: 0 points
 Eligible to score at least 4 points under Opportunity Index?:

Attachments and Certifications

Site Control Documentation: 19326 - Magnolia Estates - Receipted Contract.pdf


Neighborhood Risk Factors:

Other Pertinent Information:
PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is executed to be effective as of the latest date that Buyer or Seller executed this Agreement as set forth on their signature page (the "Effective Date"), by and between MADHOUSE DEVELOPMENT SERVICES, INC., a Texas corporation (8500 Shoal Creek Blvd., Building 4, Suite 208, Austin TX 78757, Attn: Henry Flores; Telephone: 512.633.4037; Fax: 512.900.2860; email: henry@madhousedevelopment.net) ("Buyer"); and K&Z DEVELOPERS, LTD., a Texas limited partnership (Attn: Eduardo Zegaib; 824 E. Hackberry Avenue, Suite 110, McAllen, Texas 78501-6788; Telephone: 011-52-155-5278-0180; Fax: N/A; email: ezegaib@me.com) (collectively, "Seller") (collectively, "Sellers") (Buyer and Seller are collectively referred to as the "Parties", and each a "Party").

1. **Property.** On the terms herein set forth, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, +/-6.47 acres of land located at 1001 S. McCall Road, Edinburg, Hidalgo County, Texas 78539, as further described and labeled "PARCEL B" and outlined in red on Exhibit A, attached hereto and made a part hereof (as may be updated pursuant to the last sentence of this Section 1, the "Land"), together with all of Seller'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, streets, and/or avenues, open or proposed, abutting the Land, (b) riparian and water rights, (c) air rights, (d) uses, servitudes, licenses, easements, tenements, hereditaments, and appurtenances now or hereafter belonging to or benefiting the Land, (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 (collectively, the "Property"). The exact legal description of the Land will be determined by the Survey (hereinafter defined) and will replace the form of Exhibit A currently attached to this Agreement.

2. **Purchase Price.** The purchase price for the Property shall be One Million Three Hundred Forty-One Thousand Five Hundred Tenety-Six and 03/100 Dollars ($1,341,526.03) (the "Purchase Price"), payable at Closing by Buyer.

3. **Title Company and Earnest Money.**
   a. **Name and Amount.** Independence Title Company (5900 Shepherd Mountain Cove Bldg. 2, Suite 200, Austin, Texas 78730; attn: Dan Phares; Telephone: 512.279.7273; Fax: 512.767.6350; email: dphares@independencetitle.com) (the "Title Company") will serve as the title company. Within five (5) business days of the date Buyer receives a copy of this Agreement executed by both Parties, Buyer shall deposit the sum of $10,000.00 with the Title Company as earnest money to be applied to the Purchase Price (the "Original Earnest Money"), subject to the terms and provisions of this Agreement.
b. **Original Earnest Money Becoming Non-Refundable.** Notwithstanding anything in this Agreement to the contrary:

(i) Unless Buyer terminates this Agreement prior to 5:00 p.m. (CST) on January 31, 2019, $5,000.00 of the Original Earnest Money shall be (i) non-refundable to Buyer except as otherwise provided by the terms of this Agreement, and (ii) applied to the Purchase Price at Closing; and

(ii) Thereafter, unless Buyer terminates this Agreement prior to 5:00 p.m. (CST) on March 1, 2019, the remaining $5,000.00 of the Original Earnest Money shall also be (i) non-refundable to Buyer except as otherwise provided by the terms of this Agreement, and (ii) applied to the Purchase Price at Closing.

c. **Financing Period Earnest Money.** If Buyer does not terminate this Agreement prior to the end of the Due Diligence Period (hereinafter defined), Buyer shall deposit with the Title Company additional earnest money in the amount of $10,000.00 (the "**Financing Period Earnest Money**") and together with the Original Earnest Money, the "**Earnest Money**") prior to 5:00 pm (CST) on March 2, 2019. The aggregate total of the Earnest Money shall be (i) non-refundable, except as otherwise provided herein, and (ii) applied to the Purchase Price at Closing.

d. **Account.** Until released to Seller pursuant to the terms of this Agreement, the Earnest Money shall be held by the Title Company as escrow agent, to be handled in accordance with the terms and conditions of this Agreement. All interest, if any, earned on the Earnest Money shall be added to and become part of the Earnest Money.

e. **INDEPENDENT CONSIDERATION.** NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, $100.00 OF THE ORIGINAL EARNEST MONEY SHALL BE DEEMED INDEPENDENT CONSIDERATION AND NON-REFUNDABLE TO BUYER, AND IS TO BE PAID TO SELLER UNDER ALL CIRCUMSTANCES, FOR AND IN CONSIDERATION OF SELLER'S EXECUTION AND PERFORMANCE OF THIS AGREEMENT.

4. **Conditions Precedent.**

a. **Due Diligence Period.** Beginning on the Effective Date, Buyer shall have until 5:00 p.m. (CST) on March 1, 2019 (the "**Due Diligence Period**") to, at its sole cost and expense, conduct inspections of the Property (the "**Due Diligence Investigations**") and assess its suitability, as determined by Buyer in its sole and absolute discretion, for Buyer's intended development of the Property (the "**intended purpose**"). The right to conduct Due Diligence Investigations includes, without limitation, the right of Buyer and Buyer's employees, agents, affiliates, and contractors to enter upon any portion of the Property to conduct market studies, appraisals, and needs assessments, and to take measurements, inspect, conduct test borings, make boundary and topographical survey maps, and to conduct geotechnical, soil, environmental, groundwater, wetland, and other studies.
required by Buyer in its sole discretion, and to, without limitation, determine the existence and adequacy of utilities serving the Property, zoning and compliance with laws. No Due Diligence Investigations shall constitute a waiver or relinquishment on the part of Buyer of its rights under any covenant, condition, representation, or warranty of Seller under this Agreement. Buyer shall be and remain liable to Seller for any and all damage to the Property caused by Buyer and its agents, servants, and employees during the Due Diligence Period, excluding damages caused by pre-existing conditions. Notwithstanding anything to the contrary set forth in this Agreement, Buyer shall be permitted to continue to conduct the Due Diligence Investigations while this Agreement is in effect.

b. **Due Diligence Materials.** Within three (3) days of the Effective Date (the "**Delivery Date**"), Seller shall deliver to Buyer, at no cost to Buyer, each of the following items that are in the possession of or available to Seller (collectively, the "**Due Diligence Materials**"):  

(i) Current year and immediately prior year tax bills and evidence of payment of same through the Effective Date;
(ii) Existing soil and groundwater tests;
(iii) Title commitments, title policies and surveys;
(iv) Environmental reports;
(v) Underground storage tank test results;
(vi) Waste disposal records; permit records;
(vii) Code violation notices and records;
(viii) Traffic studies; and
(ix) All other engineering tests and other studies, reports, records and notices pertaining to the Property.

c. **Right to Terminate.** In the event the Property is not satisfactory to Buyer for any reason, in Buyer's sole and absolute discretion, Buyer shall have the right to terminate this Agreement by delivering written notice thereof to Seller prior to the expiration of the Due Diligence Period, and Buyer shall receive a full and prompt refund of the portion of the Original Earnest Money that is refundable to Buyer pursuant to the terms of Section 3.b above, together with accrued interest thereon, without the need for Seller's signature or consent for its release. Any portion of the Original Earnest Money that is not refundable to Buyer pursuant to the terms of Section 3.b above shall be delivered to Seller.
d. **Title and Survey.**

(i) Within fifteen (15) days of the Effective Date, Seller shall cause the Title Company to deliver to Buyer a current title commitment (the "Commitment") for an Owner's Policy of Title Insurance (the "Title Policy"), in an amount equal to the Purchase Price, together with full and legible copies of all of the exceptions to title listed in Schedule B of the Title Commitment, and any documents listed in Schedule C of the Title Commitment (collectively, the "Title Exceptions").

(ii) Buyer may, at Buyer's expense, obtain a survey of the Property (the "Survey"). The field note description set forth on the Survey that is acceptable to the Title Company shall replace the depiction of the Land provided in this Agreement and shall be used in the Deed (hereinafter defined), unless a plat of the Land is filed of record prior to Closing, in which event the lot and block description of the Land contained in such recorded plat shall be used in the Deed.

(iii) If any of the Commitment, the Title Exceptions, or the Survey are not satisfactory to Buyer, then Buyer may give Seller written notice of the items that Buyer finds unacceptable (the "Title Objections") before the later of (A) fifteen (15) days after receipt of the Commitment and full and legible copies of the Title Exceptions, or (B) March 1, 2019. Seller shall have fifteen (15) days after such notice from Buyer to deliver written notice to Buyer that it either agrees to cure the Title Objections within thirty (30) days (or such longer period of time agreeable to Buyer and Seller in the Parties' reasonable determination) or to advise Buyer that it will not so cure the Title Objections. All Title Exceptions to which Buyer does not object or which are deemed waived and accepted by Buyer, as herein provided, are collectively referred to as the "Permitted Exceptions."

(iv) If Seller does not agree to so cure one or more of the Title Objections (and Seller's failure to respond in writing shall be deemed to be Seller's decision NOT to cure the Title Objections), Buyer may either (A) accept title to the Property subject to the Permitted Exceptions without a reduction in the Purchase Price, or (B) terminate this Agreement prior to the expiration of the Due Diligence Period by delivering written notice to Seller and receive a full and prompt refund of the Original Earnest Money, together with accrued interest thereon, without the need for Seller's signature or consent for its release

(v) Notwithstanding any other provision of this Agreement to the contrary, including without limitation whether or not Buyer includes such items in its schedule of Title Objections, Seller shall have the unconditional obligation to remove, discharge, pay or cure, at no cost to Buyer, any title matters that are a lien for the payment of money, any encumbrance that can be removed by the payment of a definite sum of money, and any title matter that arose after the Effective Date
that was not approved by Buyer in writing, and none of such items shall be deemed Permitted Exceptions or appear in the Title Policy.

e. **Financing Period.** Provided Buyer deposits the Financing Period Earnest Money as provided hereinabove, Buyer shall have until 5:00 pm (CST) on August 15, 2019 (the "**Financing Period**") to terminate this Agreement if Buyer does not secure financing, whether Tax Credits (hereinafter defined), conventional financing, or otherwise, on terms acceptable to Buyer in Buyer's sole and absolute discretion, by delivering written notice thereof to Seller prior to the expiration of Financing Period, in which case Seller shall receive the Original Earnest Money, and Buyer shall receive a refund of all of the Financing Period Earnest Money.

f. **Governmental Approvals.**

(i) Buyer may, at its option and expense, prepare and submit applications for, and seek to obtain approval by the applicable governmental authorities and/or third parties of, approvals, permits, licenses, easements and agreements required for Buyer's intended development and use of the Property, including without limitation, those for utilities, zoning, special uses, building construction, access, platting, easements, ingress/egress easements, site construction and off-site improvements (collectively, the "**Governmental Approvals**"). Seller shall cooperate with Buyer in connection with the preparation of the applications and seeking the Governmental Approvals, including without limitation, Seller's execution and delivery of all applications, documents, plats, and instruments required by the applicable governmental authorities and/or third parties, provided that Seller shall not be obligated to incur any expense in connection therewith.

(ii) With respect to subdividing in order to create a legal lot for the Property, the applicable governmental authority will likely require the construction of a driveway or street in order to connect and give the Property access to McColl Road (the "**Access Drive**"). Buyer shall construct the Access Drive, and Seller shall donate the land to do so, enter into the appropriate documents with Buyer to ensure continued access to McColl Road, and reimburse Seller for 50% of the costs it incurs in connection with the construction of the street, curbing, gutters, lighting, and drainage ("**Seller's Contribution**"). After construction of the Access Drive, Buyer shall give Seller written notice of the construction costs and the amount of Seller's Contribution, and, if requested by Seller, backup documents verifying such costs. Seller and Buyer are concurrently entering into a contract for the purchase and sale of the tract of land labeled "Parcel A" on Exhibit A, and said contract contains a similar requirement for Seller's Contribution toward the construction of an Access Drive. If both contracts for Parcel A and Parcel B close, Seller's Contribution shall nevertheless be 50% of the aggregate costs related to the construction of the Access Drive(s). Seller's Contribution shall be withheld from the proceeds of closing and held in escrow by the Title Company. If not a public street, the Access Drive will be included in the legal description of the land subject to the tax credit LURA.
g. **Other Conditions.** It shall be a condition precedent to Buyer's obligation to close this transaction and purchase the Property that all of the following are timely satisfied:

(i) **Title Policy.** At Closing, the Title Company shall be prepared to issue the Title Policy to Buyer with all standard or pre-printed exceptions deleted (to the extent such can be deleted), evidencing Buyer owns good and indefeasible fee simple title in and to the Property subject only to the Permitted Exceptions.

(ii) **Representations and Warranties.** At Closing, all of the representations and warranties of Seller shall be true in all material respects.

(iii) **No Liens.** At Closing, there shall be no unpaid charges, debts, liabilities, claims or obligations of Seller related to the Property, or any portion thereof, which could give rise to any mechanics', materialmen or other statutory lien against any portion of the Property other than those that will be paid or otherwise satisfied by Seller at Closing, and possession of the Property, free of all tenancies, leases and occupants, shall be delivered to Buyer at Closing.

(iv) **Subdivided.** At or prior to Closing, if the Property is part of a larger parcel belonging to Seller, the Property shall be subdivided from the larger parcel and/or platted.

(v) **Governmental Approvals.** Prior to Closing, Buyer shall have received all necessary and customary Governmental Approvals in order for Buyer to develop and operate the Property for its intended purpose.

h. **Termination.** In the event that any condition precedent in Section 4.g is not satisfied by the date specified in Section 4.g, Buyer shall have the right to terminate this Agreement by delivering written notice thereof to Seller, at which time Buyer shall receive a full and prompt refund of the Earnest Money (including without limitation, the Extension Fees, if any) without the need for Seller's consent or signature for its release.

5. **Closing.**
a. **Delivery of Documents.** The conveyance of the Property and the closing of the transaction herein described (the "Closing") shall occur on or before October 31, 2019 (as may be extended, the "Closing Deadline"), in escrow at the offices of the Title Company, or such other manner and/or location mutually acceptable to Buyer and Seller; provided, however, Buyer may elect to close at any time upon seven (7) days' prior notice to Seller.

(i) Seller shall deliver at Closing: (A) a special warranty deed conveying good and indefeasible fee simple title in and to the Property to Buyer (or its designee), subject only to the Permitted Exceptions (the "Deed"); (B) a lien affidavit acceptable to the Title Company; (C) easements, wherein Seller is the grantor, that are reasonably necessary for the development and operation of the Property for its
intended purpose; (D) an affidavit of non-foreign status; (E) any other customary affidavit or document required by the Title Company to delete the so-called standard exceptions to the Title Policy (which may be addressed by a customary affidavit); and (F) such other customary documents, instruments, certifications, and confirmations as may be reasonably required to fully effect and consummate the transactions contemplated hereby and for the Title Company to issue the Title Policy in the form required by this Agreement.

(ii) Buyer shall deliver at Closing: (A) the remaining balance of the Purchase Price as provided by this Agreement; and (B) such other documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the transaction contemplated hereby.

b. **Extensions.** Buyer shall have the right to extend the Closing Deadline up to three (3) times to (1) November 30, 2019, (2) December 31, 2019, and (3) January 31, 2020 by delivering to Seller written notice thereof prior to the end of the then applicable Closing Deadline, and delivering to the Title Company an extension fee in the amount of $10,000.00 (each, an "Extension Fee") for each extension. Each Extension Fee shall become a part of and treated in the same manner as the Earnest Money and shall be (i) non-refundable to Buyer except to the extent the Earnest Money is refundable to Buyer pursuant to the terms of this Agreement, and (ii) applied to the Purchase Price at Closing. In the event any of the Earnest Money, including without limitation the Extension Fees, is released to Seller and this Agreement is subsequently terminated in a manner in which the Earnest Money is to be paid to Buyer, Seller shall deliver to Buyer an amount equal to the sum of the refundable Earnest Money, including without limitation any Extension Fees, within five (5) days of such termination.

c. **Prorations.** Subject to the terms of Section 5.f below, Buyer and Seller shall prorate all real estate taxes, personal property taxes and all other assessments related to the Property (collectively, the "Taxes") as of the date of Closing, with the date of Closing being treated as a day of ownership by Buyer. If the final tax bill is not available at Closing, the Taxes shall be prorated based upon the latest available tax assessment for the Property, which proration shall be re-prorated outside of escrow when the actual Taxes are determined. If the Property is part of a larger tax parcel or was recently subdivided from a larger tax parcel and a separate tax bill is unavailable at Closing, then the Taxes shall be based upon the latest available tax bill based upon the percentage of the larger tax parcel being purchased by Buyer. If there are any improvements on the larger tax parcel that are separately valued or assessed, the value of such improvements shall be assigned to the Buyer only if such improvements are located upon the Property. The Party that is determined to owe any additional amount as a result of such re-proration shall promptly pay such amount to the other Party. Notwithstanding anything to the contrary set forth in this Agreement, Seller shall pay on or before the date of Closing all Taxes for previous tax years and all other preceding periods for which any Taxes are due or payable. Seller shall be solely responsible for any recoupment of any agricultural credit for the Property. This
Section 5.c shall not apply to any Rollback Taxes (hereinafter defined) described in Section 5.f below. This Section 5.c shall survive the Closing and delivery of the Deed.

d. **Costs.** Seller shall pay the taxes and assessments for which Seller is responsible hereunder, the cost for the preparation of the Deed, any conveyance fee or transfer tax, the cost of curing any title or survey defect that Seller agreed to cure or is obligated to cure pursuant to the terms of this Agreement, the premium for the Title Policy and 100% of any broker's commission or fee in accordance with Section 8.f hereof. Except as may otherwise be stated herein, each Party shall bear its own expenses, including without limitation its own attorneys' fees.

e. **Seller's Obligations Prior to Closing.** At all times until Closing, Seller shall maintain indefeasible fee simple legal title to the Property free and clear of any and all defects, liens, and encumbrances of every kind and nature (other than the Permitted Exceptions and liens and encumbrances that will be released at Closing). If at any time prior to Closing Buyer or Buyer's counsel determines Seller is not or will not be able to convey to Buyer good and indefeasible fee simple title, Buyer shall have the right to terminate this Agreement by delivering written notice thereof to Seller and Buyer shall receive a full and prompt refund of the Earnest Money without the need for Seller's signature or consent for its release.

f. **Rollback Taxes.** If (i) the sale contemplated hereby, (ii) a change in the use of the Property, or (iii) a denial of any special use valuation of the Property, would result in the assessment after the Closing of additional taxes and interest applicable to the period of time before the Closing ("Rollback Taxes"), then Buyer shall receive a credit against the Purchase Price at the Closing for fifty percent (50%) of the amount of the Rollback Taxes (including interest and penalties) that may be assessed after the Closing as reasonably estimated by the Title Company (the "Estimated Rollback Taxes"). Buyer shall then be responsible for the payment of the Rollback Taxes (including interest and penalties) if and when assessed after the Closing; provided, however, if after Closing the amount of Rollback Taxes that are actually assessed (the "Assessed Rollback Taxes") exceeds the Estimated Rollback Taxes, upon written notice delivered by Buyer to Seller with the appropriate back-up material, Seller shall promptly pay to Buyer fifty percent (50%) of the difference between the Assessed Rollback Taxes and the Estimated Rollback Taxes. Notwithstanding anything to the contrary set forth in this Agreement, if any Rollback Taxes are due before the Closing due to Seller's change in use of the Property or a denial of a special use valuation of the Property, then Seller shall pay those Rollback Taxes (including any interest and penalties) at or before the Closing. This Section 5.f shall survive the Closing and delivery of the Deed.

g. **Condemnation.** If, prior to Closing, condemnation proceedings are commenced against any portion of the Property, Buyer shall have the right to either (i) terminate this Agreement by delivering written notice to Seller within fifteen (15) days of Buyer's receipt of written notice from Seller of such condemnation proceedings, receive a full and prompt refund of the Earnest Money without the need for Seller's consent for its release; or (ii)
elect not to terminate the Agreement and appear in and defend the condemnation proceedings and any award will, at Buyer's election, belong to (A) Seller, and the Purchase Price will be reduced by the same amount at Closing, or (B) Buyer, and the Purchase Price will not be reduced. If Buyer elects to terminate this Agreement pursuant to the terms of this Section 5.8, Buyer shall be permitted to seek damages from the condemning authority.

6. **Defaults and Remedies.**

a. **Seller Default.** If Seller fails to perform in accordance with the terms of this Agreement, or otherwise breaches any of the terms, covenants, agreements, representation or warranties contained in this Agreement, and such failure or breach is not cured by Seller within fifteen (15) days after Buyer's delivery to Seller of written notice thereof (and the closing deadline and all extensions thereof will be extended by fifteen (15) days), then (i) Buyer may terminate this Agreement by delivering written notice thereof to Seller, whereupon the earnest money (including without limitation, all extension fees, and any earnest money that had been delivered to Seller) shall be immediately refunded and returned to Buyer without the need for Seller's consent, and Seller shall reimburse Buyer for all reasonable out-of-pocket expenses and costs incurred by Buyer after the effective date in connection with its efforts to purchase and finance the property; provided, however, in no case shall Seller be required to reimburse Buyer such expenses and costs if Seller's failure to perform or breach is due to a cause not reasonably within Seller's control; or (ii) Buyer may bring an action for specific performance. In any action for specific performance, Buyer must institute such suit, if at all, on or before the expiration of nine (9) full months after the latest closing date under this Agreement, and, if such action is not so instituted within such period of time, then Buyer shall be deemed conclusively to have waived the right to institute such action and to have elected to pursue its other remedy provided herein. In the event Seller's default permits Buyer its remedy of specific performance, but such remedy is precluded or impaired because of the action or inaction of Seller, then Buyer shall have the right to seek recovery from Seller for the actual damages sustained by Buyer by reason of Seller's default, including attorneys' fees and expenses and court costs incurred at the trial and appellate levels.

b. **Buyer Default.** If Buyer fails to perform in accordance with the terms of this Agreement, or otherwise breaches any of the terms, covenants or agreements contained in this Agreement, and such failure or breach is not cured by Buyer within fifteen (15) days after Seller's delivery to Buyer of written notice thereof, then, as Seller's sole and exclusive remedy, Seller may terminate this Agreement by delivering written notice thereof to Buyer, the earnest money and the extension fees (to the extent paid) shall be forfeited by Buyer and delivered to Seller as liquidated damages, and not as a penalty.
SELLER ACKNOWLEDGES AND AGREES THAT THE EARNEST MONEY AND THE EXTENSION FEES (TO THE EXTENT PAID) IS A FAIR AND EQUITABLE AMOUNT FOR SELLER TO RECEIVE SINCE SELLER WILL HAVE CHANGED ITS POSITION IN RELIANCE ON BUYER COMPLETING THE TRANSACTION HEREIN DESCRIBED, WILL HAVE HELD THE PROPERTY OFF THE MARKET FOR AN EXTENDED PERIOD OF TIME IN RELIANCE UPON BUYER'S ABILITY TO CLOSE THIS TRANSACTION AND THE DAMAGES SUSTAINED BY SELLER IN SUCH CASE WOULD NOT OTHERWISE BE REASONABLY ASCERTAINABLE. EXCEPT IN CONNECTION WITH BUYER'S OBLIGATIONS SET FORTH IN THIS AGREEMENT THAT SPECIFICALLY SURVIVE CLOSING, SELLER WAIVES THE RIGHT TO EXERCISE ANY OTHER RIGHTS AND REMEDIES AVAILABLE TO SELLER BECAUSE OF A DEFAULT BY BUYER, WHETHER AT LAW AND/OR IN EQUITY, INCLUDING WITHOUT LIMITATION, THE RIGHT TO SUE BUYER FOR ADDITIONAL DAMAGES OR SEEK SPECIFIC PERFORMANCE.

7. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that:

a. **Title.** Seller is the owner of good and indefeasible fee simple title in and to the Property.

b. **Authority; Enforceability.** Seller has the capacity and authority to execute this Agreement and perform its obligations under this Agreement. This Agreement constitutes a legal and valid binding obligation of Seller, enforceable against Seller in accordance with its terms. All action necessary to authorize Seller's execution (and execution by the individual executing this Agreement on behalf of Seller), delivery and performance of this Agreement has been taken and such action has not been rescinded or modified.

c. **Hazardous Waste.** To the Best of Seller's Knowledge, there are no and there have been no wetlands, oil or gas wells (capped or uncapped) or underground storage tanks (in use or abandoned) on or about the Property and/or land adjacent to the Property. Neither Seller nor any prior owner or occupant of the Property has: (i) caused or permitted, and Seller has received no notice and has no knowledge of, the generation, manufacture, refinement, transportation, treatment, storage, deposit, release, salvage, installation, removal, disposal, transfer, production, burning or processing of Hazardous Substances (as hereinafter defined) on, under or about the Property or any adjacent properties; (ii) caused or permitted, and Seller has received no notice and has no knowledge of, the Release (as hereinafter defined) or existence of any Hazardous Substance on, under or affecting the Property or any adjacent properties; or (iii) caused or permitted, and Seller has received no notice and has no knowledge of, any substances or conditions on, under or affecting the Property or any adjacent properties which may support any claim or cause of action, whether by a governmental agency or any other person or entity, under any applicable federal, state or local law, rule, ordinance or regulation, including without limitation, those related to Hazardous Substances. For the purpose of this Agreement, the terms "Hazardous Substances" and "Release" shall have the same meaning as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq.; provided, however, that the definition of Hazardous Substances shall
also include, without limitation, petroleum and related by-products, hydrocarbons, radon, asbestos, urea formaldehyde, polychlorinated biphenyl compounds and any other substance considered hazardous to humans or the environment.

d. **Leases; Options.** (i) There are no outstanding written or oral leases, and To the Best of Seller's Knowledge, there are no easements and/or other types of agreement in any way affecting the Property that are not recorded in the Real Property Records of Hidalgo County, Texas, (ii) To the Best of Seller's Knowledge, no person or entity has any right with respect to all or any portion of the Property (whether by option to purchase, easement, right of first refusal, contract or otherwise) that may prevent or interfere with Buyer taking title to, and exclusive possession of, all of the Property at Closing, and (iii) Seller shall not enter into any new lease, easement, or other agreement with respect to the Property during the pendency of this Agreement that is not terminable upon demand without Buyer's prior written consent, which may be given or withheld by Buyer in Buyer's sole and absolute discretion.

e. **No Notices.** Seller has not received any notice of, and To the Best of Seller's Knowledge, there are no (i) proposed special assessments, condemnation or changes in the roads adjacent to the Property; (ii) pending public improvements that will result in any charge being levied or assessed against, or a lien being created upon, the Property; or (iii) pending or threatened eminent domain or condemnation proceedings against or involving any portion of the Property or any adjacent parcel.

f. **Access.** Seller has not received any notice of any existing or proposed plans to widen, modify or realign any street adjoining the Property, and, To the Best of Seller's Knowledge, the Property has full and free access to and from public highways, streets and roads. To the Best of Seller's Knowledge, there are no pending or threatened proceeding by any governmental authority, or any other fact or condition, which would limit or result in the termination of the Property's access to and from such public highways, streets and roads.

g. **Reserved.**

h. **Pipelines.** To the Best of Seller's Knowledge, there are no transportation pipelines, including without limitation, pipelines for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product or hazardous substance, located on, under or within the Property.

i. **Owners' Association.** The Property is not subject to mandatory membership in a property owners' association.

j. **Litigation.** To the Best of Seller's Knowledge, there is no pending or threatened litigation, arbitration, administrative action or examination, claim or demand whatsoever relating to the Property; and To the Best of Seller's Knowledge, no attachments, execution
proceedings, liens, assignments or insolvency proceedings are pending or threatened against Seller or the Property or contemplated by Seller.

k. **Performance under Leases and Service Contracts.** During the pendency of this Agreement, Seller will perform its material obligations under all agreements that affect the Property.

l. **Insurance.** During the pendency of this Agreement, Seller shall maintain all insurance Seller was carrying on the Effective Date.

m. **Exclusive Rights.** In consideration of the efforts and expenses that Buyer is required to perform and incur in connection with its review of the Property, Seller agrees not to do the following during the pendency of this Agreement: (i) either directly or indirectly, offer to sell or solicit any offers to purchase or negotiate for the sale or disposition of the Property; and (ii) either directly or indirectly, offer to sell or solicit any offers to purchase or negotiate for the sale or disposition of any other property owned by Buyer located within the city limits of the City of Edinburg, Texas, with or to any party that is in the business of or has any intention to apply for, syndicate, and sell low income housing tax credits in connection with such party's proposed purchase and development of such other property.

n. **Foreign Person.** Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

o. **Utility Availability.** To the Best of Seller's Knowledge, public water, sanitary and storm sewer, electricity, and natural gas are available to the Property.

Seller shall fully disclose to Buyer, immediately upon its occurrence, any change in facts, assumptions or circumstances of which Seller becomes aware prior to the date of Closing that may affect the representations and warranties set forth above. The representations and warranties of Seller contained herein shall survive the Closing and delivery of the Deed.

As used herein, the phrase, "To the Best of Seller's Knowledge" shall mean the actual, current knowledge of only Eduardo Zegaib, who Seller represents is the person most knowledgeable of the matters described herein with respect to the Property, but such phrase shall not be deemed to imply that such person has conducted, or is under any obligation to conduct, an inquiry or investigation with respect to the subject matter of any representation or warranty herein except inspecting Seller's own, current files related to the Property.

8. **Miscellaneous.**

a. **Plans and Approvals.** Buyer shall have the right to file, at Buyer's expense, any and all applications and plans necessary to obtain building permits, subdivision or plat (or the vacation of any existing subdivision or plat), and/or any other agreement, assurance, approval or permit from any and all governmental authorities having jurisdiction over the
Property that Buyer deems appropriate in connection with the intended purpose of the Property. Seller agrees to join in the execution of any application required in order to obtain any such agreement, assurance, permit or approval (or file such application individually if the relevant governmental authority shall so require). Seller further agrees to cooperate with Buyer or its nominee in all respects, including without limitation, attending and giving favorable testimony at any hearings on the petitions or applications, meeting with and providing information to public and private utilities and governmental and quasi-governmental entities, and otherwise working to obtain the agreements, assurances, approvals and permits required by Buyer or its nominee without additional cost or obligation to Buyer or its nominee.

b. **Notices and Deadline Dates.** Any notice, request, demand, instruction or other document to be given or served hereunder or under any agreement or instrument executed pursuant to this Agreement shall be in writing and shall be (i) delivered personally, (ii) sent or by overnight express courier, postage prepaid, or (iii) sent by facsimile or electronically (email), each addressed to the Parties at their respective addresses set forth above, and the same shall be effective upon receipt or refusal of delivery (if verification of receipt is requested, the Party receiving notice via facsimile or electronically will provide prompt verification of receipt). A Party may change its address for receipt of notices by service of a notice of such change in accordance herewith. If any deadline under this Agreement falls on a Saturday, Sunday or legal holiday (which for purposes of this Agreement shall be not be considered a "business day"), the deadline shall be extended to the next business day.

c. **Attorneys' Fees.** In the event either Party brings an action at law or other proceeding permitted under the terms of this Agreement against the other Party in order to enforce or interpret any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all reasonable costs and expenses, including without limitation reasonable attorneys' fees, by the non-prevailing Party.

d. **Successors and Assigns; Binding Agreement.** Seller may not assign this Agreement without the written consent of Buyer. Buyer may assign this Agreement and/or any interest herein to a third party without Seller's consent. In the event of an assignment of this Agreement, the assignor shall be released from any and all of the assignor's obligations under this Agreement, provided the assignee agrees in writing to be fully bound by the terms and conditions of this Agreement as if such assignee had been the original Buyer hereunder. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assignees. This Agreement constitutes the entire agreement between the Parties, and supersedes any and all prior agreements, arrangements and understanding between the Parties. This Agreement may only be amended by a written agreement executed by all of the Parties.
e. **Memorandum of Agreement.** Seller hereby authorizes Buyer to memorialize this Agreement or any portion hereof with a memorandum thereof filed in the Real Property Records of the county in which the Property is located and agrees to promptly execute any documentation reasonably required by Buyer to effectuate the same.

f. **BROKERS AND COMMISSIONS.** SELLER SHALL PAY ALL BROKER FEES AND COMMISSIONS DUE AT CLOSING, INCLUDING WITHOUT LIMITATION BUYER'S BROKER, LAURA LIZA PAZ OF NAI RIO GRANDE VALLEY, WHO SHALL RECEIVE AN AMOUNT EQUAL TO 6.0% OF THE PURCHASE PRICE PAID AT CLOSING. THE TITLE COMPANY IS HEREBY INSTRUCTED TO MAKE SUCH PAYMENT AT CLOSING OUT OF THE SELLER'S PROCEEDS FROM THE SALE OF THE PROPERTY. SELLER INDEMNIFIES BUYER AGAINST, AND SHALL HOLD BUYER HARMLESS FROM, ANY AND ALL SUITS, CLAIMS, DEMANDS, JUDGMENTS, DAMAGES, COSTS AND EXPENSES OF OR FOR ALL SUCH BROKER FEES AND/OR COMMISSIONS, AND SHALL PAY ALL COSTS OF DEFENDING ANY ACTION OR LAWSUIT BROUGHT TO RECOVER ANY FEES OR COMMISSIONS INCURRED BY BUYER, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES.

g. **Effect of Termination.** This Agreement shall be void and of no further force and effect upon any proper termination under the terms hereof (other than terms herein that specifically provide that they survive the termination of this Agreement).

h. **Multiple Counterparts.** This Agreement may be executed in one or more counterparts, and all so executed shall constitute one and the same agreement, binding upon the Parties, and notwithstanding that all of the Parties are not signatories to the same counterparts.

i. **Time of the Essence.** Time is of the essence of this Agreement and every provision hereof.

j. **CHOICE OF LAW.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT RULES. VENUE AND JURISDICTION FOR ALL CLAIMS UNDER THIS AGREEMENT SHALL BE EXCLUSIVELY IN THE STATE OF TEXAS.

k. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement, a legal, valid and enforceable provision that is as similar in terms to such illegal, invalid or unenforceable provision as is possible.

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*Purchase and Sale Agreement -- Page 14*

Seniors/6.47 Acres -- 1001 S. McColl Road, Edinburg, Texas

70547987v.2 0053556/00000

[Signature]

Enrique Hoy
I. Complete Understanding. This Agreement represents the complete understanding between the Parties as to the subject matter hereof and supersedes all prior negotiations, statements and agreements, either written or oral, between the Parties. No inducements, representations, statements or agreements have been made or relied upon in the making of this Agreement, except those specifically set forth in this Agreement. Neither Party has any right to rely on any other prior or contemporaneous statements and/or agreements made by anyone concerning this Agreement that are not set forth herein.

m. Subdivide. In the event the transaction closes and Buyer purchases the Property, Buyer shall assume the responsibility for, and pay the expenses incurred in connection with, subdividing and creating a separate parcel containing the Property.

n. AS-IS Sale.

(i) BUYER ACKNOWLEDGES AND AGREES THAT IT IS TAKING THE PROPERTY IN AN ARM'S LENGTH TRANSACTION BETWEEN THE PARTIES. THE PURCHASE PRICE OF THE PROPERTY WAS BARGAINED ON THE BASIS OF AN "AS-IS" "WHERE-IS" BASIS AS OF THE EFFECTIVE DATE AND THE CLOSING DATE AND REFLECTS THE AGREEMENT OF BUYER AND SELLER THAT THERE ARE NO REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES SAVE AND EXCEPT THOSE EXPRESS REPRESENTATIONS AND WARRANTIES OF SELLER CONTAINED IN THIS AGREEMENT, ANY ADDENDUM, AND THE CLOSING DOCUMENTS (THE "EXPRESS REPRESENTATIONS AND WARRANTIES").

(ii) BUYER WARRANTS THAT IT IS KNOWLEDGEABLE IN REAL ESTATE MATTERS AND THAT IT IS ACQUIRING THE PROPERTY BASED SOLELY ON ITS OWN INDEPENDENT DUE DILIGENCE PERTAINING TO THE PROPERTY PRIOR TO THE DATE OF THE DEED WITH THE SOLE EXCEPTION BEING SELLER'S EXPRESS REPRESENTATIONS AND WARRANTIES. BUYER ACKNOWLEDGES THAT, SAVE AND EXCEPT THE EXPRESS REPRESENTATIONS AND WARRANTIES, SELLER HAS NEITHER MADE, MAKES NOR WILL MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL OR OCCUPATIONAL PROTECTION, POLLUTION, SUBDIVISION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, THOSE PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE, MATERIAL OR SUBSTANCE.

(iii) BUYER AFFIRMS THAT BUYER HAS NOT RELIED ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH SUCH PROPERTY FOR ANY PARTICULAR PURPOSE AND THAT, SUBJECT TO THE EXPRESS REPRESENTATIONS AND WARRANTIES, SELLER MAKES NO REPRESENTATION OR WARRANTY THAT SUCH PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE.
The provisions of this Section 8.m. will be included in the Deed with appropriate modification of terms as the context requires.

o. **Multiple Originals; Faxed, Emailed Initials/Signatures.** The undersigned agree that this Agreement may be executed in multiple counterparts, all of which shall be considered originals, and that this Agreement, including all multiple counterparts, shall be filed with the Title Company. Additionally, for purposes of finalizing this Agreement, if this Agreement or any addenda or exhibits executed in connection with it is transmitted by facsimile machine ("fax") or email ("email"), it shall be treated for all purposes as an original document; the signature and/or initial of any party on the document transmitted by way of fax or email shall be considered for all purposes as an original signature. Any such faxed or emailed document shall be considered to have the same binding legal effect as an original document. At the request of any party, any faxed or emailed document shall be re-executed by each signatory party in an original form and deposited with the Escrow Agent.

9. **Texas Disclosures.** By its signature to this Agreement, Buyer hereby acknowledges its receipt of the following notices at or before the execution of this Agreement:

a. **Notice Regarding Possible Liability for Additional Taxes.** If for the current ad valorem tax year the taxable value of the Property that is the subject of this Agreement is determined by a special appraisal method that allows for appraisal of the Property at less than its market value, Buyer may not be allowed to qualify the Property for that special appraisal in a subsequent tax year and the Property may then be appraised at its full market value. In addition, the transfer of the Property or a subsequent change in the use of the Property may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the Property. The taxable value of the Property and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the Property is located.

b. **Notice Regarding Possible Annexation.** If the Property that is the subject of this Agreement is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, Buyer should contact all municipalities located in the general proximity of the Property for further information.

c. **Property Located in a Certificated Service Area of a Utility Service Provider.** The Property may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If the Property is located in a certificated area there may be special costs or charges that Buyer
will be required to pay before Buyer can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to the Property. Buyer is advised to determine if the Property is in a certificated area and contact the utility service provider to determine the cost that Buyer will be required to pay and the period, if any, that is required to provide water or sewer service to the Property.

d. Notice Regarding Title. The Texas Real Estate License Act requires a real estate agent to advise Buyer that he should have an attorney examine an abstract of title to the Property being purchased; or a title insurance policy should be obtained. Notice to that effect is hereby given to Buyer.

10. Tax Credit Provisions. Notwithstanding anything to the contrary set forth in this Agreement or otherwise:

a. Housing Tax Credits. The Parties hereby acknowledge that Buyer intends to apply for, syndicate and sell certain housing tax credits (whether under state or federal law, collectively, "Tax Credits") with the assistance of the Texas Department of Housing and Community Affairs.

b. Seller Cooperation. Seller hereby agrees to assist Buyer, at Buyer's sole cost and expense, in obtaining and submitting such information as is necessary to apply for or obtain the Tax Credits to the extent such information is available to Seller and not to Buyer.

[Signatures begin on the next page]
IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

Buyer: MADHOUSE DEVELOPMENT SERVICES, INC.,
a Texas corporation

By: Enrique Flores, President

Executed: January 7, 2018

Seller: K&Z DEVELOPERS, LTD.,
a Texas limited partnership

By: K&Z Management, L.L.C.,
a Texas limited liability company,
its General Partner

By: Eduardo Zegaib, Manager

Executed: January 9, 2018
TITLE COMPANY'S ACCEPTANCE AND RECEIPT

By signing this Acceptance and Receipt, the Title Company (a) acknowledges that it has received a copy of this Agreement executed by both Buyer and Seller, (b) agrees to act as escrow agent hereunder, and (c) acknowledges that it has received from Buyer a check payable to it in the amount of $10,000.00 constituting the Original Earnest Money hereunder, which it has deposited into one of its federally insured accounts. The Title Company shall likewise deposit any additional amounts it receives constituting Earnest Money into a federally insured account (or release same to Seller in accordance with the terms of the Agreement).

INDEPENDENCE TITLE COMPANY

By: ____________________________
   
   Name: Doug Thomas
   Title: Senior Vice President
          Commercial Group

Date: January 8, 2019
EXHIBIT A

LAND

PARCEL
"A" 6.42 Acres Net

PARCEL
"B" 6.47 Acres Net
Due to the lapse in Congressional Appropriations for Fiscal Year 2019, the U.S. Department of Housing and Urban Development (HUD) is closed. HUD websites will not be updated until further notice. For more information, see HUD Contingency Plan for Possible Lapse in Appropriations.

The 2019 Qualified Census Tracts (QCTs) and Difficult Development Areas (DDAs) are based on data from the 2010 Decennial census and three releases of 5-year tabulations from the American Community Survey (ACS): 2010-2014, 2011-2015, and 2012-2016. The designation methodology is explained in the federal Register notice published October 22, 2018.

Select Year

- 2019
- 2018

Approximate Site Location