

# BOARD MEETING OF MAY 8, 2014

**J. Paul Ozer, Chair**



Juan Muñoz, Vice-Chair

J. Mark McWatters, Member

Leslie Bingham Escareño, Member

Robert D. Thomas, Member

Tom Gann, Member

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

**A G E N D A**

**9:30 a.m.  
May 8, 2014**

**John H. Reagan Building  
Room JHR 140, 105 W 15<sup>th</sup> Street  
Austin, Texas**

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

**J. Paul Ozer, Chairman**

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

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

**CONSENT AGENDA**

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

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

***RULES***

- a) Presentation, Discussion and Possible Action on a proposed new 10 TAC, Chapter 2, Enforcement and proposed repeal of 10 TAC, Chapter 1, §1.14 related to Administrative Penalties, proposed repeal of 10 TAC, Chapter 5, §5.17 related to Sanctions and Contract Close Out and proposed repeal of 10 TAC, Chapter 60 related to Administrative Penalties all to be published in the *Texas Register* for public comment

**Patricia Murphy**  
Chief, Compliance

***COMMUNITY AFFAIRS***

- b) Presentation, Discussion, and Possible Action to release and subsequently award a Request for Applications (“RFA”) to administer the Comprehensive Energy Assistance Program (“CEAP”) in Bee, Live Oak, McMullen and Refugio counties and the Community Services Block Grant program in Aransas, Bee, Kenedy, Kleberg, Live Oak, McMullen, and Refugio counties
- c) Presentation, Discussion, and Possible Action on Award of Unexpended Program Year 2013 Community Services Block Grant (“CSBG”) Funds
- d) Presentation, Discussion, and Possible Action on Award of Unexpended Emergency Shelter Grants Program (“ESGP”) and Emergency Solutions Grant (“ESG”) Funds from prior year awards

**Michael DeYoung**  
Assist. DED, Network &  
Customer Service

**MULTIFAMILY FINANCE DIVISION**

**Jean Latsha**  
Dir. Multifamily Finance

- e) Presentation, Discussion, and Possible Action regarding an Award of HOME funds from the 2013-1 HOME Multifamily Development Program Notice of Funding Availability 13501 Houston House Apartments Victoria
- f) Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution #14-027 and a Determination Notice of Housing Tax Credits for Northcrest Apartments
- g) Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution #14-028 and a Determination Notice of Housing Tax Credits for Pine Haven Apartments

**ASSET MANAGEMENT:**

**Cari Garcia**  
Director Asset Management

- h) LURA Amendment 95081/93057 Parks at Wynnewood Dallas
- i) Tax Credit Application Amendment 13102 Reserve at McAlister Burleson

**LEGAL**

**Jeff Pender**  
Deputy General Counsel

- j) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Avalon Apartments (HTC 91036)
- k) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Alamo Plaza (HOME 530687)

**REPORT ITEMS**

The Board accepts the following reports:

- 1. Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act
- 2. Report Item on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures
- 3. TDHCA Outreach Activities, April 2014

**David Cervantes**  
Chief Financial Officer

**Tim Nelson**  
Dir. Bond Finance

**Michael Lyttle**  
Chief of External Affairs

**ACTION ITEMS**

**ITEM 2: INTERNAL AUDIT:**

Report from the Audit Committee

**Sandy Donoho**  
Director Internal Audit

**ITEM 3: BOND FINANCE:**

Presentation, Discussion, and Possible Action on Resolution No. 14-029 authorizing the Restructuring of Interest Rate Swap Transaction with Respect to Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D

**Tim Nelson**  
Dir. Bond Finance

**ITEM 4: APPEALS AND WAIVERS:**

Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under any of the Department's Program or Underwriting Rules 14031 Louis Manor Port Arthur

**Jean Latsha**  
Director Multifamily Finance

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

## EXECUTIVE SESSION

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

**J. Paul Oser**  
Chairman

1. The Board may go into Executive Session Pursuant to Texas Government 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
2. 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, including:
  - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., filed in federal district court, Northern District of Texas.*
  - b) *Galveston Open Government Project, et al., v. U.S. Department of Housing and Urban Development, et al., filed in federal district court, Southern District of Texas*
  - c) *Culberson County litigation*
3. 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
  - a) Complaint/comments regarding State of Texas' Phase 2 Plan for Fair Housing Choice: Analysis of Impediments; Texas Appleseed, Texas Low Income Housing Information Service
4. 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-
5. 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](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, 512-475-4577 at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

# CONSENT AGENDA

1a

**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**MAY 8, 2014**

Presentation, Discussion and Possible Action on a proposed new 10 TAC, Chapter 2, Enforcement and proposed repeal of 10 TAC, Chapter 1, §1.14 related to Administrative Penalties, proposed repeal of 10 TAC, Chapter 5, §5.17 related to Sanctions and Contract Close Out and proposed repeal of 10 TAC, Chapter 60 related to Administrative Penalties all to be published in the *Texas Register* for public comment.

**RECOMMENDED ACTION**

**WHEREAS**, as a result of actions taken by the 83<sup>rd</sup> Texas Legislature, the Department's debarment authority was expanded; and,

**WHEREAS**, staff recognizes the benefit of having all possible sanctions addressed in one chapter of the Texas Administrative Code;

**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 publish the proposed new 10 TAC Chapter 2, concerning Enforcement, the proposed repeal of 10 TAC, Chapter 1, §1.14 related to Administrative Penalties, the proposed repeal of 10 TAC, Chapter 5, §5.17 related to Sanctions and Contract Close Out and the proposed repeal of 10 TAC, Chapter 60 related to Administrative Penalties in the *Texas Register* for review and public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

As a result of actions taken by the 83<sup>rd</sup> Texas Legislature, the Department's debarment authority was expanded to give authority to debar persons not only from the housing tax credit program but from participation in any program administered by the Department. Staff has been working on a rule to incorporate and implement this new authority and in doing so recognized the benefit of having all possible sanctions addressed in one Chapter of the Texas Administrative Code. Therefore, staff drafted a proposed new Chapter 2, Enforcement, with four subchapters, Subchapter A, General; Subchapter B, Enforcement Regarding Community Affairs Contract Administrators, (currently in Chapter 5), Subchapter C, Administrative Penalties and Subchapter D, Debarment from Participation in Programs Administered by the Department.

The preliminary draft of the proposed rule was posted to the TDHCA website on February 24, 2014. At that time an online discussion forum was opened. On March 3, 2014, staff hosted a conference call regarding the draft rule and the Department hosted roundtables March 18-20, 2014, to solicit feedback.

At the April 2014 Board meeting, the concept of this rule was brought as a discussion item to seek additional public engagement and input, and, considering that input, to obtain guidance from the Board as to the direction staff should take with this rule. Staff recommends the attached rule to be published in the *Texas Register* for public comment.



## **Attachment 1. Preamble, proposed new 10 TAC Chapter 2, Enforcement**

The Texas Department of Housing and Community Affairs (the “Department”) proposes a new 10 TAC Chapter 2, concerning Enforcement. The proposed new chapter provides notice to Persons of possible sanctions for noncompliance with Department programs. The proposed repeal of other Department rules that bear on the matters contained in this new chapter is being published concurrently with this new proposal.

Subchapter A, General, provides an overview of the rule, defines words and terms used in the rule, and notes that there are additional enforcement mechanisms available to the Department.

Subchapter B, Enforcement Regarding Community Affairs Contract Administrators, outlines actions the Department may take in the event of noncompliance with contracts entered into between the Department and subrecipients to administer Community Affairs programs. In general, under these programs, funds are advanced to subrecipients to operate programs. One possible outcome for noncompliance is addressed in §2.201 whereby funds would be provided on a full or partial cost reimbursement basis. Section 2.202 outlines the actions the Department will take to closeout a contract if a subrecipient fails to comply with program and contract requirements.

Subchapter C Administrative Penalties, explains the process and timing of referrals for administrative penalties. This subchapter also details the possible outcomes of an administrative penalty referral. Section 2.302 contains three graphic charts that identify noncompliance events that are subject to administrative penalties under the Department’s Multifamily, Single Family and Community Affairs Programs. The charts identify maximum penalty amounts for first time and repeat violations.

Subchapter D, Debarment from Participation in Programs Administered by the Department, explains the process and timing of referrals for debarment. This subchapter also details the possible outcomes of a debarment referral. In addition, this subchapter provides a list of specific events that will be referred for debarment.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new chapter is in effect, enforcing or administering the new chapter does not have any foreseeable changes related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated, as a result of the new chapter, will be improved over all compliance and shortened periods of noncompliance. There will not be any additional new economic cost to any individuals required to comply with the new chapter, as individuals are already subject to the potential of administrative penalties .

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no new economic effect on small or micro-businesses, as small and micro-businesses are already subject to the potential of administrative penalties.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 23, 2014 through June 23, 2014 to receive input on the new chapter. Written comments may be submitted to the Texas

Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 23, 2014.

STATUTORY AUTHORITY. The proposed new chapter is authorized pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504 which authorizes the Department to debar persons, §2306.041 through §2306.050 which authorizes the Department to assess administrative penalties, and §2306.6719 which provides for a corrective action period.

The proposed new chapter affects no other statutory provisions.

**Attachment 2. Preamble, proposed repeal of 10 TAC, Chapter 1, §1.14 related to Administrative Penalties.**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 1, §1.14 related to Administrative Penalties. This rule is proposed for repeal in connection with the proposal of new 10 TAC, Chapter 2 regarding Enforcement, which is published concurrently in this issue of the *Texas Register*.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is effect, there will be no foreseeable change related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated, will be improved clarity of the consequence for noncompliance through the adoption of a new chapter. There will not be any additional economic cost to any individuals required to comply with the repeal.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no new economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 23, 2014 through June 23, 2014 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 23, 2014.**

**STATUTORY AUTHORITY.** The proposed repeal is authorized pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504 which authorizes the Department to debar persons, and §2306.041 through §2306.050 which authorizes the Department to assess administrative penalties.

The proposed repeal affects no other statutory provisions.

10 TAC, Chapter 1, Subchapter A, §1.14 Administrative Penalties

### **Attachment 3. Preamble, proposed repeal of 10 TAC, Chapter 5, §5.17 related to Sanctions and Contract Close Out**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 5, §5.17 related to Sanctions and Contract Close Out. This rule is proposed for repeal in connection with the proposal of new 10 TAC, Chapter 2 regarding Enforcement, which is published concurrently in this issue of the *Texas Register*.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is effect, there will be no foreseeable change related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated, will be improved clarity of the consequence for noncompliance through the adoption of a new chapter. There will not be any additional economic cost to any individuals required to comply with the repeal.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no new economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 23, 2014 through June 23, 2014 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 23, 2014.**

**STATUTORY AUTHORITY.** The proposed repeal is authorized pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504 which authorizes the Department to debar persons, and §2306.041 through §2306.050 which authorizes the Department to assess administrative penalties.

The proposed repeal affects no other statutory provisions.

10 TAC, Chapter 5, Subchapter A, §5.17 Sanctions and Contract Close Out

#### **Attachment 4. Preamble, proposed repeal of 10 TAC, Chapter 60 related to Administrative Penalties**

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC, Chapter 60, related to Administrative Penalties. This Chapter is being repealed in connection with the proposal of new 10 TAC, Chapter 2 regarding Enforcement, which is published concurrently in this issue of the *Texas Register*.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is effect, there will be no foreseeable change related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated, will be improved clarity of the consequence for noncompliance through adoption of a new chapter. There will not be any additional economic cost to any individuals required to comply with the repeal.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no new economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held May 23, 2014 through June 23, 2014 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. JUNE 23, 2014.**

**STATUTORY AUTHORITY.** The proposed repeal is pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules, §2306.0504 which authorizes the Department to debar persons, and §2306.041 through §2306.050 which authorizes the Department to assess administrative penalties.

The proposed repeal affects no other statutory provisions.

10 TAC, Chapter 60, Subchapter C

§60.307 Penalty Table

§60.308 Factors for Modifying Recommended Penalty

§60.309 Debarment

TITLE 10  
PART 1  
CHAPTER 2

COMMUNITY DEVELOPMENT  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
ENFORCEMENT

**Subchapter A          General**

*§2.101. Policy and Purpose.*

(a) In accordance with authority conferred on the Department by Texas Government Code, Chapter 2105 and 2306 and under applicable provisions of federal law the Department has a range of measures it is able to take to address identified instances of noncompliance. In some instances these measures may also require compliance with or adherence to additional federal or state requirements.

(b) It is the overarching intent and guiding principle of these rules that full compliance is required, and the enforcement mechanisms provided for herein are intended to be used in a manner which:

(1) Promotes full compliance;

(2) Uses compliance assistance methods and, where needed, enforcement mechanisms, to obtain compliance and to deter noncompliance;

(3) Takes appropriate enforcement action against those who fail to take the necessary and appropriate measures to comply; and

(4) Provides for the exclusion or removal from Department programs, of persons who have demonstrated that they are either unable or unwilling to comply.

(c) Any person or entity that enters into a commitment or contract with the Department directly or with a subrecipient of Department financial assistance, setting forth the terms and conditions under which housing tax credits, loans, grants, or any other source of funds or financial assistance from the Department will be made available (collectively the “Program Agreements”) is required to comply with all provisions of their respective Program Agreements. Requirements in Program Agreements include requirements to comply with applicable federal or state laws. The failure to comply with any provision of a Program Agreement is, in addition to a breach of such Program Agreement, a violation of this rule.

(d) This rule sets forth the mechanisms that the Department may use to bring about compliant administration of Department funded programs, state or federal, and to ensure that persons who have established, through egregious and/or repetitive noncompliance behavior that they are either unwilling to behave in a compliance manner or are unable to do so.

(e) Refer to 10 TAC Chapter 10, Subchapter F, related to Compliance Monitoring and/or 10 TAC, Chapter 5, Subchapter L, related to Compliance Monitoring for detailed information about the

monitoring process and remedies available to Persons who disagree with the Department's assessment of their compliance status.

*§2.102. Definitions.*

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(a) Consultant--One who provides services or advice for a fee and not as an employee.

(b) Enforcement Committee (Committee)--A committee of employees of the Department appointed by the Executive Director. The members of that Committee shall be no fewer than five (5) and no more than nine (9). The Executive Director may designate certain members as ex officio and non-voting. Legal Services and Compliance will each designate persons to attend meetings and advise the Committee, but not be members of the Committee. A Legal Services designee will also serve as Secretary to the Committee. Voting Committee members may designate a substitute who shall be permitted to attend and vote in their absence.

(c) Legal Requirements--all requirements of state, federal, or local statute, rule, regulation, ordinance, order, court order, official interpretation, policy issuance, OMB Circulars, representations to secure awards, or any similar memorialization of requirement including a requirement of a purely contractual nature, no matter how designated, applicable to a matter.

(d) Program Agreements include:

(1) agreements between the Department and a person setting forth Legal Requirements and

(2) agreements between a person subject to a Program Agreement and a third party to carry out one or more of those Legal Requirements as the agent, consultant, partner, contractor, subcontractor, or otherwise for a person described in Subsection 1, above.

(e) Responsible Party--any Person subject to a Program Agreement.

(f) Vendor--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

*§2.103. General.*

(a) A Responsible Party must comply with all applicable Legal Requirements.

(b) A failure by the Department to identify, address, or take action with respect to any one or more instances of noncompliance does not constitute a waiver, ratification, or approval of, consent to, or agreement with such noncompliance. It is the responsibility of a Responsible Party to be familiar with the applicable requirements.

(c) Record keeping. The Compliance Division will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all instances of identified noncompliance, whether the noncompliance was correctable or not, and, if correctable, whether the noncompliance was corrected within the time afforded for corrective action.

(d) As provided for in Texas Government Code, §2306.6719, parties subject to certain compliance requirements must be afforded notice and a reasonable period to correct identified instances of noncompliance that are susceptible to being corrected. It is the responsibility of each division to provide any required cure, corrective action, or notice period(s) prior to referral of any matter to the Enforcement Committee under this chapter. Matters should not be referred to the Committee until such cure, corrective action, or notice periods have been completed or expired.

*§2.104. Enforcement Mechanisms.*

(a) The enforcement mechanisms referenced in this chapter are not the exclusive mechanisms whereby compliance may be obtained in any particular circumstance. In addition to Department action, enforcement mechanisms related to Department programs may include, where applicable, those required or employed by other entities or agencies. With regard to the low income housing tax credit program, if an identified instance of noncompliance is required by the Internal Revenue Service ("IRS") to be reported to the IRS, it will be reported to the IRS by the Compliance Division on Form 8823.

(b) Enforcement mechanisms available to the Department include but are not limited to:

(1) Enforcement of contractual provisions, including but not limited to, rights of suspension or termination and placement on a cost reimbursement status, as described in Subchapter B of this Chapter, relating to Enforcement Regarding Community Affairs Contract Administrators;

(2) Assessment of Administrative Penalties, as described in Subchapter C of this Chapter, relating to Administrative Penalties; or,

(3) Debarment, as described in Subchapter D of this Chapter, relating to Debarment.

**Subchapter B                      Enforcement Regarding Community Affairs Contract Administrators**

*§2.201 Full or partial cost reimbursement.*

(a) Full cost reimbursement requires that the Department, acting through or under oversight of the Compliance Division, review any item and supporting documentation and backup before approving it for payment.

(b) Partial cost reimbursement enables the Department, acting through or under oversight of the Compliance Division, to establish a tailored protocol to review only a portion of requests for reimbursement and, based on that review, to allow for advances subject to reasonable and appropriate limitations.



(c) The Department through its Compliance Division may place on full or partial cost reimbursement any entity administering a Department program allowing for funds to be advanced prior to documentation of expenditure where there has been identified a significant pattern of compliance violations indicating a material failure to adopt and adhere to policies and procedures to ensure compliant activity.

(d) An entity placed on full or partial cost reimbursement must, within ninety (90) days, unless extended as provided for herein, either be restored to advance status or have proceedings for termination of their contract and/or eligible entity status and/or debarment commenced. Restoration to advance status will require the entity to develop a comprehensive plan, which, if the entity is an eligible entity under the CSBG Act, will constitute a Quality Improvement Plan as provided for in the CSBG Act, to address its issues. The plan must be reviewed and acceptable to the Department after a review by the Compliance Division and the Community Affairs Division. Extensions of up to an additional ninety (90) days may be approved by the Executive Director for good cause including but not limited to additional time to comply with procurement requirements or additional time for the Department to review submittals.

*§2.202 Sanctions and Contract Closeout.*

(a) Subrecipients that enter into a contract with the Department to administer programs are required to follow all Legal Requirements governing these programs.

(b) If a Subrecipient fails to comply with program and contract requirements, rules, or regulations and in the event monitoring or other reliable sources reveal material deficiencies in performance, or if the Subrecipient fails to correct any deficiency within the time allowed by federal or state law, the Department may apply one or more of the sanctions described in paragraphs (1) - (5) of this subsection:

(1) Deny the Subrecipient's requests for advances and place it on a Modified Cost Reimbursement method of payment until proof of compliance with the rules and regulations are received by the Department;

(A) Subrecipients placed on a Modified Cost Reimbursement method of payment must comply with the reporting requirements outlined in §5.211 of this title (relating to Subrecipient Reporting Requirements); §5.311 of this title (relating to Reports); §5.406 of this title (relating to Subrecipient Reporting Requirements); §5.506 of this title (relating to Subrecipient Reporting Requirements); §5.1006 of this title (relating to Performance and Expenditure Benchmarks); and §5.2007 of this title (relating to Reporting), as applicable;

(B) Subrecipients on a Modified Cost Reimbursement method must provide all supporting documentation to the Department no later than seven (7) days after the reporting due date;

(C) If Subrecipient has not submitted documentation required for cost reimbursement review in accordance with reporting deadlines, Subrecipient may be required to enter a monthly report

containing zero amounts and submit documentation required for the review as part of the next's month reporting;

(D) Subrecipients reporting a monthly report containing zero amounts throughout the program year shall submit all required support documentation to the Department for review by the last regular monthly report (before the final report); and/or

(E) The Department will review and assess supporting documentation submitted by Subrecipient no later than the seventh (7th) day of the following month.

(2) Withhold all payments from the Subrecipient (both reimbursements and advances) until acceptable confirmation of compliance with the rules and regulations are received by the Department, reduce the allocation of funds (with the exception of Community Services Block Grant ("CSBG")) to Eligible Entities as described in §5.206 of this chapter (relating to Termination and Reduction of Funding) and as limited for LIHEAP funds as outlined in Texas Government Code, Chapter 2105 or impose sanctions as deemed appropriate by the Department's Executive Director, at any time, if the Department identifies possible instances of fraud, waste, abuse, fiscal mismanagement, or other serious deficiencies in the Subrecipient's performance;

(3) Suspend performance of the contract or reduce funds until proof of compliance with the rules and regulations are received by the Department or a decision is made by the Department to initiate proceedings for contract termination;

(4) If possible, elect not to provide future grant funds to the Subrecipient until appropriate actions are taken to ensure compliance; or

(5) Terminate the contract. Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a contract, in whole or in part, at any time the Department establishes there is good cause for termination. Such cause may include, but is not limited to, fraud, waste, abuse, fiscal mismanagement, or other serious deficiencies in the Subrecipient's performance. For CSBG contract termination procedures, please refer to §5.206 of this title.

(c) Contract Close-out. When the Department moves to terminate a contract and such termination takes effect, the procedures described in paragraphs (1) - (12) of this subsection will be implemented.

(1) The Department will issue a termination letter to the Subrecipient no less than thirty (30) days prior to terminating the contract. If the entity is an eligible entity under the CSBG Act the Department will simultaneously initiate proceedings to terminate the eligible entity status and the effectiveness of the contractual termination will be stayed automatically pending the outcome of those proceedings. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another provider; establish a Modified Cost Reimbursement plan for closeout proceedings, or provide instructions to the Subrecipient to prepare

a proposed budget and written plan of action that supports the closeout of the contract. The plan must identify the name and current job titles of staff that will perform the close-out and an estimated dollar amount to be incurred.

(2) If the Department determines that a Modified Cost Reimbursement is an appropriate method of providing funds to accomplish closeout, the Subrecipient will submit backup documentation for all current expenditures associated with the closeout. The required documentation will include, but not be limited to, the chart of accounts, detailed general ledger, revenue and expenditure statements, time sheets, payment vouchers and/or receipts, and bank reconciliations.

(3) No later than thirty (30) days after the contract is terminated, the Subrecipient will take a physical inventory of client files, including case management files, and will submit to the Department an inventory of equipment with a unit acquisition cost of \$5,000 or greater or having a useful life of more than one year.

(4) The terminated Subrecipient will have thirty (30) days from the date of the physical inventory to copy all current client files. Client files must be boxed by county of origin. Current and active case management files also must be copied, inventoried, and boxed by county of origin.

(5) Within thirty (30) days following the Subrecipient's due date for copying and boxing client files, Department staff will retrieve copied client files.

(6) The terminated Subrecipient will prepare and submit no later than sixty (60) days from the date the contract is terminated, a final report containing a full accounting of all funds expended under the contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the close-out period must be received by the Department no later than sixty (60) days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The Subrecipient will submit to the Department no later than sixty (60) days after the termination of the contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the contract.

(9) The Department may transfer title to equipment having a unit acquisition cost (the net invoice unit price of an item of equipment) of \$5,000 or greater or having a useful life of more than one year, to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove equipment covered by this paragraph within ninety (90) days following termination of the contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, equipment.

(11) As required by any OMB circular or other circulars and standards as applicable to the contract, as amended from time to time, a current year Single Audit must be performed for all agencies that have exceeded the federal expenditure threshold under OMB Circular A-133 or the State expenditure threshold under Uniform Grant Management Standards. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the contract. The terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than sixty (60) days from the date the Department determines the close-out is complete.

(12) Subrecipients shall submit within sixty (60) days after the date of the close-out process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the sixty (60) day contractual requirement of submitting all referenced reports and documentation to the Department.

## **Subchapter C            Administrative Penalties**

### *§2.301 General*

The Compliance Monitoring Division will recommend to the Enforcement Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapter 2306 or a rule or order adopted under Chapter 2306 and failed, despite written notice, to take appropriate and timely corrective action or seek and obtain for good cause an extension of the time to take corrective action. In addition, the Compliance Division may recommend to the Enforcement Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties has an established pattern of repeated substantive and material violations even if corrected within the applicable corrective action periods.

### *§2.302 Administrative Penalty Process*

- (a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102.
- (b) The Compliance Division will recommend the initiation of administrative penalty proceedings to the Enforcement Committee by referral of a compliance monitoring matter to the secretary of the Committee.
- (c) The secretary of the Enforcement Committee shall promptly contact the Responsible Party describing the violations involved. If the secretary is able to facilitate closure of the matter without further action by the Committee, the secretary will report back to the Compliance Division. Should the secretary and Responsible Party fail to come to closure, the matter will be presented to the Enforcement Committee for possible action.

(d) The Enforcement Committee will first offer to hold an informal meeting with the Responsible Party to attempt to reach an agreed resolution. If any such meeting is held:

(1) Statements made in the meeting shall not be used as evidence in any proceedings if agreed resolution is not reached. This does not preclude establishing such matters through the introduction of proper evidence.

(2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense.

(3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues; and,

(4) In order to facilitate candid dialogue, informal meetings will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.

(e) An informal meeting may result in:

(1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;

(2) A Compliance Assistance Notice issued by the Committee, available for Responsible Parties appearing for the first time before the committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which the Committee wishes to place the Responsible Party on specific notice with regard to possible future violations;

(3) An agreement to resolve the matter through corrective action without penalty. In this circumstance, the agreement shall be reported to the Executive Director;

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as agreements to obtain training. In this circumstance, a proposed agreed order and draft report will be prepared and presented to Board for approval;

(5) A recommendation by the Committee to the Executive Director regarding the issuance of a report to the Board and issuance of a Notice of Violation to the Responsible Party seeking the assessment of administrative penalties;

(6) A determination that the Responsible Party should be referred for debarment, in which case the Responsible Party will be offered another opportunity to appear before the Committee; or,

(7) Other action as the Committee deems appropriate.

(f) Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty, the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

(g) Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(1) a summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) a statement informing the Responsible Party of the right to a hearing before the State Office of Administrative Hearings (“SOAH”), on the occurrence of the violation(s), the amount of penalty, or both;

(3) any other matters deemed relevant and

(4) the amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration whether the Responsible Party has timely taken appropriate actions within their control, the amount of penalty necessary to deter future violations, and, in the instance of a proceeding to assess administrative penalties against a Responsible Party administering CSBG, CEAP, ESG or HHSP, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). He or she shall further take into account whether the Department’s purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs or other matters giving rise to financial exposure to the Department.

(g) The amount of recommended penalty will be determined with reference to a penalty schedule shown in figure 2.302.

(h) Not later than twenty (20) days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the determination and recommended penalty or request a hearing.

(i) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with Title 10, Part 1, Chapter 1, §1.13 (relating to Adjudicative Hearing Procedures).

*§2.302 Penalty table for Multifamily Rental Violations.*

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty</b>	<b>Repeat Violation</b>
Violations of the Uniform Physical Condition Standards	Up to \$500 for level 3 deficiencies, up to \$250 for level 2 deficiencies, up to \$125 for level 1 deficiencies	Up to \$1,000 for level 3 deficiencies, up to \$500 for level 2 deficiencies, up to \$250 for level 1 deficiencies
Noncompliance related to Affirmative Marketing requirements described in §10.617 of this title	Up to \$500	Up to \$1000
Development is not available to the general public because of leasing issues	Up to \$750 per day per violation	Up to \$1,000 per day per violation
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancelation	Up to \$1,000 per day	Up to \$1,000 per day
Failure to timely enter into Land Use Restriction Agreement (LURA)	Up to \$1,000 per day	Up to \$1,000 per day
Project failed to meet minimum set aside	Up to \$1,000 per day	Up to \$1,000 per day
No evidence of, or failure to certify to material participation of a non-profit or HUB, if required by LURA	Up to \$10 per day per violation	Up to \$20 per day per violation
Development failed to meet additional state required rent and occupancy restrictions	Up to \$250 per day per violation	Up to \$500 per day per violation
Noncompliance with social service requirements	Up to \$500 per violation	Up to \$750 per violation
Development failed to provide housing to the elderly as promised at application	Up to \$5 per day per violation	Up to \$10 per day per violation
Failure to provide special needs housing as required by LURA	Up to \$1,000	Up to \$1,000

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty</b>	<b>Repeat Violation</b>
Changes in Eligible Basis or Applicable percentage in violation of the IRS 8823 Audit Guide or other IRS guidance	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation
Failure to submit all or parts of the Annual Owner's Compliance Report	Up to \$1,000	Up to \$1,000
Failure to timely submit quarterly reports as required by §10.607	Up to \$100 for first violation	Up to an additional \$500 for each subsequent quarter the report is not submitted
Noncompliance with utility allowance requirements described in §10.614 and/or Treasury Regulation §1.42-10	Up to \$50 per unit per day	Up to \$100 per unit per day
Noncompliance with lease requirements described in §10.613	Up to \$500	Up to \$1000
Development has failed to establish and maintain a reserve account in accordance with §10.404 of this title	Up to \$1,000	Up to \$1,000
Failure to provide a notary public as promised at application	Up to \$500	Up to \$750
Violation of the Unit Vacancy Rule	Up to \$250 per violation	Up to \$500 per violation
Failure to provide pre-onsite documentation	Up to \$250	Up to \$500
Failure to provide amenity as required by LURA	Up to \$750 per violation	Up to \$1000 per violation
Failure to pay asset management, compliance monitoring or other required fee	Up to \$250 for the first day plus \$10 per day for each subsequent day the violation continues	Up to \$500 for the first day plus \$50 per day for each subsequent day the violation continues



<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty</b>	<b>Repeat Violation</b>
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this chapter)	Up to \$1000 for the first day plus \$100 per day for each subsequent day the violation continues	Up to \$1000 for the first day plus \$200 per day for each subsequent day the violation continues
Failure to timely provide fair housing disclosure notice	Up to \$100 per violation	Up to \$200 per violation
Noncompliance with tenant selection requirements described in §10.610 of this title	Up to \$500 per violation	Up to \$1,000 per violation
Program Unit not leased to Low-Income household	Up to \$1,000 per violation	Up to \$1,000 per violation
Program unit occupied by nonqualified full-time students	Up to \$1,000 per violation	Up to \$1,000 per violation
Low-Income units used on a transient basis	Up to \$500 per violation	Up to \$1,000 per violation
Violation of the Available Unit Rule	Up to \$500 per violation	Up to \$1,000 per violation
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Unit not available for rent	Up to \$1,000 per unit per violation	Up to \$1,000 per unit per violation
Failure to collect data required by §10.608(b)(1) and/or §10.608(b)(2)	Up to \$50 per violation	Up to \$100 Per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$1,000 per violation	Up to \$1,000 per violation
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty</b>	<b>Repeat Violation</b>
Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under chapter 2306	Up to \$1,000 per violation per day	Up to \$1,000 per violation per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation

*§2.302 Penalty table for Single Family Program Violations.*

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
Noncompliance related to Affirmative Marketing requirements	Up to \$500	Up to \$1000
Fair housing violations	Up to \$100 per violation	Up to \$200 per violation
Repeated violations of interim loan terms or timeline	Up to \$500	Up to \$1000
Records retention violations	Up to \$100 per violation	Up to \$200 per violation
Failure to attend required training as required by program rule, policy or agreement	Up to \$100 per violation	Up to \$200 per violation
Providing assistance to households that are not income eligible	Up to \$500	Up to \$1000
Violations of construction standards	Up to \$500	Up to \$1000
Violations of property condition standards	Up to \$500	Up to \$1000
Violation of Conflict of Interest Policies	Up to \$500	Up to \$1000
Violation of program policies regarding use of funds for sectarian or religious activity	Up to \$500	Up to \$1000
Failure to comply with Limited English Proficiency (“LEP”) policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
Failure to comply with labor standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to comply with procurement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to comply with Section 3 requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to comply with displacement policies as required by program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Failure to collect data required by program rules, policies or agreements	Up to \$50 per violation	Up to \$100 Per violation
Failure to provide reports required program rules, policies or agreements, such as single audit certifications	Up to \$250 per violation	Up to \$1,000 per violation
Failure to provide required documentation or corrections to documentation	Up to \$50 per day	Up to \$150 per day
Failure to comply with defective mortgage loan policies per program rules, policies or agreements	Up to \$50 per violation	Up to \$100 Per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
For tenant-based rental programs, gross rent exceeds the highest rent by program rule, policy or agreement	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to return or repay funds to the Department as required by rule, policy or agreements (such as contract termination, assessed penalties, disallowed costs, overpayment, Deobligation, or recapture)	Up to \$50 per day	Up to \$150 per day
Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under chapter 2306	Up to \$1,000 per violation per day	Up to \$1,000 per violation per day
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1000

*§2.302 Penalty table for Community Affairs Program Violations.*

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
Lack of financial duties or material inventory segregation of duties	Up to \$500	Up to \$1,000
No Cost Allocation / Not Cost Allocating properly	Up to \$500 for each instance	Up to \$1,000 for each instance
Violation of Texas Public Information Act	Up to \$1,000 for each instance + up to \$100 for each day the entity failed to comply	Up to \$1,000 for each instance + up to \$200 for each day the entity failed to comply
Lack of Insurance or Fidelity Bond Coverage	Up to \$1,000+ up to \$100 a day for each day not in compliance	Up to \$1,000 + up to \$200 a day for each day not in compliance

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
Failure to submit Inventory Report within 45 days (end of contract period)	Up to \$500	Up to \$1000
Unallowable/Unreasonable expenditure	Up to \$1,000 for each instance	Up to \$1,000 for each instance
Violation of Procurement Requirements	Up to \$1,000 for each service or product not procured	Up to \$1,000 for each service or product not procured
Lack of Subcontractor contract	Up to \$250 for each instance	Up to \$500 for each instance
Lack of prior approval for purchase(s)	Up to \$500 for each instance	Up to \$1,000 for each instance
Instance of Fraud, Waste and/or Abuse	Up to \$1,000	Up to \$1,000
Comingling of funds, Misapplication of funds.	Up to \$1,000	Up to \$1,000
Failure to timely submit Audit Certification Form	Up to \$250	Up to \$500 + up to \$200 for each month not in compliance
Failure to timely submit Single Audit	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance
Lack of providing requested documentation/item(s) for monitoring	Up to \$500 per day for each item or documentation not provided	Up to \$500 per day for each item or documentation not provided
Failure to timely respond to Report/ provide required correspondence	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance
Failure to report/record program income	Up to \$500 for each instance	Up to \$1,000 for each instance
Noncompliance with record retention requirements	Up to \$500 for each instance	Up to \$1,000 for each instance
Providing assistance to income or SAVE ineligible applicants	Up to \$500 for each instance	Up to \$1,000 for each instance
Service provided to clients not according to poverty population makeup	Up to \$500	Up to \$1,000

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
Failure to meet Board of Director Requirements	Up to \$1,000 + up to \$100 for each day the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to comply
Failure to comply with Department minimum applicant/client denials and appeals	Up to \$250 for each instance	Up to \$500 for each instance
Failure to Prioritize applicants	Up to \$250 for each instance	Up to \$500 for each instance
Lack of providing Assurance 16 activities	Up to \$250 for each instance	Up to \$500 for each instance
Failure to complete or to properly complete required program documents.	Up to \$250 for each instance	Up to \$750 for each instance
Failure to complete or properly complete a process required by the 10 TAC, Part 1, Chapter 5.	Up to \$250 for each instance	Up to \$750 for each instance
Payment to Vendor without a Vendor Agreement	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to perform Outreach activities	Up to \$500	Up to \$1,000
Weatherized unit expenditure over maximum cost per unit w/o prior approval	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to input HHSP client data into the Homeless Management Information System	Up to \$500 for each instance	Up to \$1,000 for each instance
Other noncompliance with a contract requirement	Up to \$1000	Up to \$1000
Failure to comply with case management requirements	Up to \$500	Up to \$750
Noncompliance with Material Installation Standards Manual	Up to \$500	Up to \$750
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1000
Noncompliance with Texas Prompt Payment Act	Up to \$500	Up to \$750

<b>Noncompliance Event</b>	<b>First time violation Administrative Penalty Up To</b>	<b>Repeat Violation</b>
Noncompliance with Historical Commission requirements	Up to \$500	Up to \$750

**Subchapter D            Debarment From Participation in Programs Administered by the Department**

*§2.401 General*

(a) The Department’s Enforcement Committee may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor is subject to disbarment for, but not limited to the following:

- (1) The Responsible Party has been placed on full or partial cost reimbursement and failed to provide the Compliance Division with an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program; or,
- (2) The Responsible Party, Consultant or Vendor meets any of the ineligibility criteria referenced in §10.202 of the Department’s Uniform Multifamily Rules, Title 10, Part 1, Chapter 10, Subchapter C, related to Ineligible Applicants and Applications.
- (3) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department.

(b) Debarment of an eligible entity under the CSBG Act shall not take effect until and unless proceedings to terminate eligible entity status have concluded and no right of appeal or review remains.

(c) The Department shall debar any Responsible Party who has:

- (1) Materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation; or,
- (2) Is debarred from participation in any program administered by the United States Government.

(d) Material violations of a LURA. In general LURAs entered into between Responsible parties and the Department require owners to maintain property in a manner that is suitable for occupancy and in

accordance with State and Federal regulations. To determine compliance with this requirement, in accordance with Treasury Regulations, the Department uses the Uniform Physical Condition Standards protocol. A person will be considered to have materially violated a Land Use Restriction Agreement if they control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection, transfers a Development without regard for a Right of First Refusal requirement, refused to allow a monitoring visit, or refuses to reduce rents to less than the highest allowed under the LURA.

(e) Repeated Violations of a LURA that shall be considered grounds for Debarment. A person shall be recommended for debarment if they control a Development that during two sequential monitoring visits are found to be out of compliance with the following events of noncompliance:

- (1) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;
- (2) Development failed to meet additional state required rent and occupancy restrictions;
- (3) Development failed to provide supportive services required by LURA;
- (4) Development failed to provide housing to the elderly as promised at application;
- (5) Utility allowance not properly calculated cited for failure to update or failure to request permission to switch methodologies or miscalculation causes overcharge of rents; or
- (6) Owner failed to execute required lease provisions, including language required by §10.613 of this title (relating to Lease Requirements) or exclude prohibited language.

(f) Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department. Single Family Administrators, Contractors, multifamily applicants, and related parties shall be referred to the Enforcement Committee for consideration for sanctions or debarment for material or repeated violations including but not limited to:

- (1) Excessive loan defaults in the first 12 months of the loan agreement;
- (2) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);
- (3) Disallowed costs that are not repaid;
- (4) Substandard construction and repeated failure to conduct required inspections;
- (5) Repeatedly participating in procurement violations;
- (6) Davis Bacon Act Violations including but not limited to:
  - (A) Failure to pay restitution (underpayment of wages). *29 CFR §5.31.*



(B) Failure to pay liquidated damages (overtime violations). *29 CFR §5.8.*

(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. *29 CFR §5.31.*

(7) Uniform Relocation Act and §104(d) Violations including but not limited to:

(A) Repeated failure to provide the General Information Notice to tenants prior to application. *49 CFR §24.203, 24 CFR §92.353 and HUD Handbook 1378.*

(B) Repeated failure to provide all required information in the General Information Notice. *49 CFR §24.203, 24 CFR §92.353 and HUD Handbook 1378.*

(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. *49 CFR §24.203 and 24 CFR §92.353, Displacement.*

(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. *49 CFR §24.203 and 24 CFR §92.353.*

(E) Repeated failure to provide 90 Day Notices to all “displaced” tenants and/or repeated failure to provide 30 Day Notices to all “non-displaced” tenants. *49 CFR §24.203 and 24 CFR §92.353.*

(F) Repeated failure to perform and document “decent, safe and sanitary” inspections of replacement housing. *49 CFR §24.203 and 24 CFR §92.353.*

(G) Failure to properly provide Uniform Relocation Act or 104(d) assistance. *49 CFR §24.203, 24 CFR §92.353 and Section 104(d) of the Housing & Community Development Act of 1974 – 24 CFR 42.*

(8) Repeated failure to serve income eligible households;

(9) Repeated failure to provide eligible match. *24 CFR §92.220 and 24 CFR §576.201*

(10) Repeated failure to report program income. *24 CFR §570.500, 24 CFR 576.407(c) and OMB A-110 Relocated to 2 CFR Part 215 (if applicable), Texas Administrative Code Title 10, Part 1, Ch. 20, Rule §20.9*

(11) Participating in activities leading to or giving the appearance of “Conflict of Interest”. *OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 24 CFRs §84.42, §92.356 (if applicable) Texas Administrative Code Title 10, Part 1, Ch. 20, Rule §20.9*

(12) Repeated material financial system deficiencies. *24 CFR Parts §84.21, §84.43, §85.20, §85.22, §85.36, §92.205, §92.206, §92.350, §92.505, §92.508 (if applicable), OMB A-110 Relocated to 2 CFR Part 215 (if applicable), OMB A-87 Relocated to 2 CFR Part 225 (if applicable), OMB A-122 Relocated to 2 CFR Part 230 (if applicable), Texas Administrative Code Title 10, Part 1, Ch. 20, Rule §20.9 and Uniform Grant Management Standards (if applicable)*

(g) Material or repeated violations of conditions imposed in connection with the administration of Community Affairs Programs administered by the Department. Community Affairs subrecipients Administrators, Contractors and related parties shall be referred to the Enforcement Committee for consideration for debarment for material or repeated violations including but not limited to:

- (1) Instance of Fraud, Waste and/or Abuse;
- (2) Comingling of funds, Misapplication of funds;
- (3) Failure to timely submit a required Single Audit or other programmatic audit;
- (4) Lack of providing requested documentation/item(s) for monitoring;
- (5) Failure to timely respond to Report/ provide required correspondence;
- (6) Failure to reimburse excess cash on hand;
- (7) Failure to reimburse disallowed expenditures and/or
- (8) Failure to meet Board of Director Requirements.

(h) Before a Responsible Party is recommended for debarment they shall be given written notice of the matter, setting forth the facts and circumstances justifying debarment. The Responsible Party shall then be offered the opportunity to attend an Informal Conference with the Enforcement Committee to discuss resolution of the matter.

(i) An Informal Conference may result in:

- (1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;
- (2) An agreement to resolve the matter through corrective action without debarment which will then be reported to the Executive Director;
- (3) An Agreed debarment which will then be reported to the Executive Director and presented to the Board for approval. A CSBG eligible entity that enters into an Agreed debarment must also voluntarily relinquish their eligible entity status;
- (4) A recommendation by the Committee to the Executive Director for debarment; or
- (5) Other action as the Committee deems appropriate.

(j) The Enforcement Committee's recommendation to the Executive Director regarding debarment shall include a recommended period of debarment. Recommended periods of debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, and presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are

qualified and properly trained. Recommended periods of debarment if based upon HUD debarment, shall be for the period of the remaining HUD debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.

(k) The Executive Director shall accept, reject, or modify the debarment recommendation by the Enforcement Committee and shall provide written notice to the Responsible Party of his determination, and an explanation of his determination if different than the Enforcement Committee's recommendation, including the period of debarment, if any. Not later than the twentieth (20<sup>th</sup>) day after the date the Responsible Party receives the notice, the Responsible Party may appeal the debarment determination in writing to the Board.

(l) The debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed debarment of an eligible entity under the CSBG Act will not become final until and unless proceeding to terminate eligible entity status have occurred, resulting in such termination and all rights of appeal or review have run or eligible entity status has been voluntarily relinquished.

(m) Any person who has been debarred is prohibited from participation in programs administered by the Department for the term of their debarment unless by its terms the order of debarment permits continuing activity in one or more specified programs. The Board will not consider modifying the terms of the debarment after the issuance of a final order of debarment.

1b

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action to release and subsequently award a Request for Applications (“RFA”) to administer the Comprehensive Energy Assistance Program (“CEAP”) in Bee, Live Oak, McMullen and Refugio counties and the Community Services Block Grant program in Aransas, Bee, Kenedy, Kleberg, Live Oak, McMullen, and Refugio counties.

**RECOMMENDED ACTION**

**WHEREAS**, the Bee Community Action Agency has relinquished its Comprehensive Energy Assistance Program (“CEAP”) and Community Services Block Grant (“CSBG”) and, as a result of relinquishing CSBG, its eligible entity status;

**WHEREAS**, the Department must ensure that services continue to be provided under these programs in Aransas, Bee, Kenedy, Kleberg, Live Oak, McMullen and Refugio counties; and,

**WHEREAS**, the Texas Legislature designated the Texas Department of Housing and Community Affairs to administer the CEAP and CSBG pursuant to Texas Government Code, §2306.094;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director be granted the authority to release and subsequently award a Request for Applications to solicit one or more CEAP and CSBG service providers in the above mentioned counties, and with the condition that all awards made are subsequently presented to the Board for ratification, and

**FURTHER RESOLVED**, that if any successful applicant is not an eligible entity under the CSBG Act, the Executive Director is authorized to initiate actions to have any such recipient(s) confirmed as an eligible entity.

**BACKGROUND**

The Board of Directors of the Bee Community Action Agency voted to relinquish the CEAP and CSBG programs. Staff requests approval for the release of an RFA to ensure uninterrupted services to low income Texans residing in the Bee Community Action Agency service area. Staff will receive and score qualified applications, and prepare recommended awards for Board ratification. Applicant organizations must apply for both of the CEAP and CSBG programs. Applicant organizations must apply for all counties in the service area of the programs.

CEAP provides assistance to low-income households in meeting their immediate energy needs and to encourage consumers to control energy costs for years to come through energy education.

CSBG provides funds to Community Action Agencies, nonprofit organizations and units of general government to alleviate the causes and conditions of poverty in communities. These funds support a variety of direct services in addition to helping maintain the core administrative elements of these local organizations.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action on Award of Unexpended Program Year 2013 Community Services Block Grant (“CSBG”) Funds

**RECOMMENDED ACTION**

**WHEREAS**, the Department has determined that there remains \$1,473,873 in unexpended Program Year 2013 Community Services Block Grant (“CSBG”) funds which will expire on September 30, 2014;

**WHEREAS**, the CSBG Act (42 USC §9901 *et seq.*) requires that not less than 90% of annual CSBG funds be used by the state to make grants to eligible entities, as well as 5% for state administration, and up to 5% for discretionary purposes;

**WHEREAS**, CSBG non-discretionary funds are allocated based on the formula detailed in 10 TAC §5.203, Distribution of CSBG Funds; and,

**WHEREAS**, funds are only recommended to be allocated to those entities without extended PY2013 contracts and in a position to receive and expend the funds;

**NOW, therefore, it is hereby**

**RESOLVED**, that the awards of unexpended Program Year 2013 CSBG funds to the CSBG Eligible Entities indicated below are hereby approved.

**BACKGROUND**

Upon review of the PY 2013 CSBG grant, staff has determined that \$1,473,873 remains unexpended. The original programming of funds did not result in full utilization of those funds. In order to expend these funds prior to the September 30, 2014 expiration date, staff proposes to award these funds to the CSBG Eligible Entities indicated below. Organizations were selected for awards based on their expenditure of PY 2013 CSBG funds within the original 12-month contract period only for those entities with no contract extension into the 2014 program year, and for organizations in a position to receive and expend funds.

When allocating CSBG non-discretionary funds to the 43 eligible entities, staff utilizes a multi-factor fund distribution formula detailed in 10 TAC §5.203, Distribution of CSBG Funds. The formula incorporates the U.S. Census Bureau Decennial 2010 Census and the most recent American Community Survey 5-Year Estimates data related to persons in poverty; a 98%



weighted factor for poverty population; and, a 2% weighted factor for the inverse ratio of population density. Department staff requests authority to obligate the unexpended PY 2013 CSBG funds to the 14 eligible entities below on a pro rata basis, based on the original formula.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter A, §1.5) includes a review of CSBG awards prior to contract execution. The award of contracts to the listed organizations may be reduced subject to this review.

**Award Recipients for Unexpended Program Year 2013 Community Services Block Grant  
(CSBG) funds**

<b>Agency</b>	<b>Award Amount</b>
Aspermont Small Business Development Center	\$33,908
Big Bend Community Action Agency	\$33,908
Cameron and Willacy Counties Community Projects	\$198,491
Combined Community Action Inc.	\$40,877
Community Action Inc. of Central Texas	\$50,455
Community Action Social Services & Education	\$35,496
Community Services of Northeast Texas, Inc.	\$50,141
Economic Action Committee of the Gulf Coast	\$33,908
Fort Worth, City of	\$334,056
Nueces County Community Action Agency	\$100,228
San Antonio, City of	\$389,326
South Plains Community Action Association	\$56,916
Texoma Council of Governments	\$47,869
Tri-County Community Action, Inc.	\$68,294

\*Award will be made to organization selected through RFA proposed as a separate item on this Board agenda.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action on Award of Unexpended Emergency Shelter Grants Program (“ESGP”) and Emergency Solutions Grant (“ESG”) Funds from prior year awards

**RECOMMENDED ACTION**

**WHEREAS**, the Department has determined that there are unexpended funds from Program Year 2010 from ESGP and from Program Years 2012 and 2013 from ESG, which staff believes are currently available for re-obligation;

**WHEREAS**, the Board has previously authorized staff to implement Notices of Funding Availability (“NOFA”s) for each of these allocations of funds;

**WHEREAS**, Department staff is currently working with the U.S. Department of Housing and Urban Development (“HUD”) to confirm eligible uses for these funds and determine applicable expiration dates for each allocation so that it can generate appropriate procedures and actions to expend these funds;

**WHEREAS**, upon confirmation from HUD as to allowable timing of funds, it is anticipated that the funds will need to be contracted quickly to increase the likelihood of their expenditure and resulting services to clients; and,

**WHEREAS**, funds will only be recommended for award to entities that were originally funded or had previously applied under the authorized NOFAs and are prepared to provide services through eligible activities;

**NOW, therefore, it is hereby**

**RESOLVED**, that staff is authorized to effectuate contracts or amendments to contracts of current recipients, or applicants under NOFAs, of the unexpended previous years ESG and ESGP funds; and,

**FURTHER RESOLVED**, that staff will provide a report and action item back to the Board for ratification of the awards after full obligation has been achieved.

**BACKGROUND**

Upon review of the previous year’s obligations, Department staff worked with HUD staff in Fort Worth to determine options for the full expenditure of the funds. Some of the funds (PY 2010) are under the ESGP program (the federal program that preceded the current ESG program) and

have different requirements on expenditures, eligible activities as well as time frames for obligation. The remaining funds from 2012 and 2013 are ESG grant funds and have slightly different rules, activities and timelines. Department staff is working diligently with HUD to determine which contracts to amend, which entities to fund with additional new dollars and the proper requirements attached to those awards.

Staff will provide a report and action item to the Board for ratification when the decisions have been effectuated into contracts, amendments and the proper requirements have been implemented in to those contractual agreements. The report will reflect the list of recipients and their funding amount.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter A, §1.5) includes a review of ESG awards prior to contract execution. The award of new contracts is subject to this review.

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action regarding an Award of HOME funds from the 2013-1 HOME Multifamily Development Program Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, the Department received a total of 32 applications for HOME awards under the 2013-1 HOME Multifamily Development Program Notice of Funding Availability (“NOFA”);

**WHEREAS**, no HOME funds under the Community Housing Development Organization (CHDO) Set Aside have been awarded under the NOFA to date and \$6,000,000 remains available under the CHDO Set Aside to award to eligible applications;

**WHEREAS**, an application for funding under the CHDO Set Aside was received for Houston House Apartments;

**WHEREAS**, each CHDO that is awarded HOME funds may also be eligible to receive a grant of up to \$50,000 for CHDO Operating Expenses;

**WHEREAS**, the applicant has also requested \$50,000 for CHDO Operating Expenses; and,

**WHEREAS**, the previous participation review in accordance with 10 TAC §1.5 by the Executive Award and Review Advisory Committee (“EARAC”) noted some issues for properties affiliated with this application; however, after considering the response received from the Applicant the issue did not rise to a level that warranted a denial from the EARAC;

**NOW, therefore, it is hereby**

**RESOLVED**, that commitment of HOME funding from the 2013-1 HOME Multifamily Development Program NOFA for Houston House Apartments is hereby approved as presented to this meeting; and,

**FURTHER RESOLVED**, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting including requiring a minimum of \$400 per unit in annual reserves to be monitored by the Department and completion of any other reviews required to ensure compliance with the applicable rules and requirements for HOME Multifamily Development Program funds.

## BACKGROUND

On September 12, 2013, the Board approved the 2013-1 HOME Multifamily Development Program NOFA with \$21,692,455 in funds (\$15,692,455 under the General Set Aside and \$6,000,000 under the CHDO Set Aside). At the Board Meeting of November 7, 2013, \$7,090,000 in HOME funds under the General Set Aside was awarded to nine applications under the NOFA. At the Board Meeting of December 12, 2013, \$2,000,000 in HOME funds under the General Set Aside was awarded to two applications under the NOFA. At the Board Meeting of January 23, 2014, \$2,850,000 in HOME funds under the General Set Aside was awarded to two applications under the NOFA. At the Board Meeting of March 6, 2014, \$1,000,000 in HOME funds under the General Set Aside was awarded to one application under the NOFA. No HOME funds under the CHDO Set Aside have been awarded under the NOFA.

Staff is recommending the Board's approval of Houston House Apartments for \$2,300,000 in HOME funds under the CHDO Set Aside and \$50,000 in CHDO Operating Expenses. The recommended applications and award amounts are outlined in the attached Application and Award Recommendations Log.

*General Information:* Houston House Apartments is applying for HOME funds without any other Department sources (4% or 9% Housing Tax Credits) of funds. The \$2,300,000 HOME loan is proposed to be a first lien mortgage at 1% interest. Other sources include a \$210,000 cash flow loan from Housing and Community Services, Inc. and a \$46,000 grant from Hudson Housing Capital. The funds will be used to rehabilitate Houston House Apartments which was originally built in 1973 in Victoria. All 50 units will target general population households earning 60% or less of the Area Median Income and will be subject to a Project Based Section 8 Contract.

*Previous Participation Review:* EARAC met on March 31, 2014, and considered the previous participation review documentation relating to the organizational structure for the Houston House Apartments application in accordance with the Previous Participation Reviews rule found in 10 TAC §1.5. The asset management review revealed several properties affiliated with the applicant that reported negative cash flow and/or a debt coverage ratio below 1.15 or no debt coverage ratio at all on Part D of their Unit Status Report. The compliance review revealed several properties affiliated with the applicant that had minor Uniform Physical Condition Standards (UPCS) violations, Fair Housing Disclosure Notice deficiencies, and income and rent limit deficiencies. Responses from the applicant were sufficient to resolve all asset management and compliance deficiencies. It was the decision of EARAC that these matters did not bear on the applicant's ability to perform in a compliant manner and therefore did not rise to a level to warrant a denial of the HOME award for Houston House Apartments.

Should the recommended award be approved, \$6,452,455 will remain available under the NOFA with \$2,752,455 under the General Set Aside and \$3,700,000 under the CHDO Set Aside, of which, applications requesting \$3,750,000 and \$3,000,000 respectively, are still under review. Subsequent award recommendations for applications undergoing staff reviews may appear on future Board agendas.





**2013-1 HOME Multifamily Development (MFD) Program NOFA - Application Log**

Total of \$21,692,455 Available

Application Acceptance Period Ended 12/30/13 - Only applications that have been awarded/recommended or are under review are reflected

Total Set Aside Funding Level: \$ 15,692,455

Available Balance (after awarded/recommended): \$ 2,752,455

**General Set-Aside**

File #	Reg.	Date Received (1)	Development Name	City	Housing Activity (2)	Reqstd HOME Units	Total units	Target Population	Layering (3)	Requested Project Funds	As Underwritten	Recommended Project Funds	Status
13046	11	2/11/2013	La Esperanza Del Rio	Rio Grande City ETJ	NC	10	60	General	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 12/12/13
13003	3	2/25/2013	Crossing at Oak Grove	Kerens	R	26	32	General	9%	\$370,000	\$ 370,000	\$ 370,000	Approved 11/7/13
13004	4	2/25/2013	Stone Creek Apartments	Kilgore	R	17	56	General	9%	\$540,000	\$ 540,000	\$ 540,000	Approved 11/7/13
13001	4	2/27/2013	Sunset Place Apartments	Malakoff	R	11	36	General	9%	\$430,000	\$ 430,000	\$ 430,000	Approved 11/7/13
13201	7	2/27/2013	The Trails at Carmel Creek	Hutto	NC	9	61	Elderly	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 11/7/13
13213	10	2/28/2013	Bailey Square	Cuero	NC	9	56	General	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 11/7/13
13232	5	3/1/2013	Pine Lake Estates	Nacogdoches	R	12	100	Elderly	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 11/7/13
13180	12	3/13/2013	Mission Village of Pecos	Pecos	NC	12	60	General	9%	\$750,000	\$ 750,000	\$ 750,000	Approved 11/7/13
13058	3	3/28/2013	Evergreen at Hebron Senior Community	Hebron	NC	8	136	Elderly	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 11/7/13
13145	3	3/28/2013	Mariposa at Elk Drive	Burleson	NC	14	180	Elderly	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 11/7/13
13051	11	5/8/2013	Royal Gardens	Rio Grande City	NC	11	80	General	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 12/12/13
13118	8	10/11/2013	Oak Ridge Apartments	Nolanville	NC	8	48	General	9%	\$1,000,000	\$ 1,000,000	\$ 1,000,000	Approved 1/23/14
13500	9	10/11/2013	Sunrise Townhomes	Fredericksburg	NC	16	36	General	HOME only	\$1,850,000	\$ 1,850,000	\$ 1,850,000	Approved 1/23/14

13119	10	11/19/2013	Emma Finke Villas	Beeville	R	13	76	General	9%	\$1,000,000	\$1,000,000	\$1,000,000	Approved 3/6/14
13139	1	12/27/2013	Stonebridge of Plainview	Plainview	NC	10	80	General	9%	\$750,000			Under review
13502	3	12/30/2013	Majors Place Apartments	Greenville	NC	36	176	General	HOME only	\$3,000,000			Under review
<b>Total General Applications</b>			<b>16</b>	<b>Unit Totals:</b>		<b>222</b>	<b>1273</b>	<b>Total:</b>		<b>\$ 16,690,000</b>	<b>\$ 12,940,000</b>	<b>\$ 12,940,000</b>	

**CHDO Set-Aside**

Total Set Aside Funding Level: \$ 6,000,000  
Available Balance (after recommended/awarded): \$ 3,700,000

File #	Reg.	Date Received	Development Name	City	Housing Activity (1)	Reqstd HOME Units	Total units	Target Population (2)	Layering (3)	Requested Project Funds	As Underwritten	Recommended Project Funds	Status
13501	10	12/30/2013	Houston House Apartments	Victoria	R	49	50	General	HOME only	\$2,300,000	\$ 2,300,000	\$ 2,300,000	To be recommended for award
13432	7	12/30/2013	Waters at Sunrise	Round Rock	NC	31	300	General	4%	\$3,000,000			Under review
<b>Total CHDO Applications</b>			<b>2</b>	<b>Unit Totals:</b>		<b>80</b>	<b>350</b>	<b>Total:</b>		<b>\$ 5,300,000</b>	<b>\$ 2,300,000</b>	<b>\$ 2,300,000</b>	

Sorted by Date Received

1 = Date Received: The date that the application, all required 3rd Party Reports, and Application Fees were received. Time received is currently not reflected.

2 = Housing Activity: New Construction=NC, Rehabilitation=R

3 = Layering of Other Department Active Applications: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program

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**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution #14-027 and a Determination Notice of Housing Tax Credits for Northcrest Apartments

**RECOMMENDED ACTION**

**WHEREAS**, the Board approved the inducement resolution for Northcrest Apartments at the June 13, 2013, Board meeting;

**WHEREAS**, approval of the inducement allowed staff to submit the application to the Bond Review Board (“BRB”) and a Certificate of Reservation was issued on January 29, 2014, with a bond delivery deadline of June 28, 2014; and,

**WHEREAS**, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of Multifamily Housing Revenue Bonds Series 2014 and the issuance of a Determination Notice for the Northcrest Apartments;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of up to \$4,300,000 in tax-exempt Multifamily Housing Revenue Bonds Series 2014 for the Northcrest Apartments, Resolution #14-027 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$174,613 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website is hereby approved in the form presented to this meeting; and,

**FURTHER RESOLVED**, that 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 under Chapter 1371, Texas Government Code, as amended, and under Chapter 2306, Texas Government Code, as amended, the Department’s Enabling Statute (the “Statute”), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. *(The Statute provides that the Department’s revenue bonds are issued without recourse on 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.)*

The Northcrest Apartments consist of the rehabilitation and acquisition of 68 existing units targeted to a general population in Big Spring, Howard County, and the site is currently zoned appropriately. The Certificate of Reservation from the BRB 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. All of the 68 total residential units will be rent and income restricted at 60% AMFI.

*Organizational Structure and Previous Participation:* The Borrower is DHI NC Housing, LP, and the General Partner is DHI NC Southwest Preservation, LLC, comprised of DHI Holding, LLC, of which Tom Dawson is the sole member, Juniper Housing, LLC, of which Terrance Coyne is the sole member, and Tim Fluetsch, as an individual. EARAC met on April 28, 2014, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews found in 10 TAC §1.5. There was no dissenting vote cast relating to the review and EARAC concurred that there were no previous participation review issues raised to warrant a recommendation of denial.

*Public Hearing:* A public hearing for the proposed development was conducted by the Department on August 28, 2013; there was no one in attendance at the hearing. A copy of the hearing transcript is included behind this write-up. The Department has not received any letters of support or opposition for this development.

*Census Demographics:* The existing development is located at 1002 North Main Street in Big Spring. Demographics for the census tract (9503.00) include an AMFI of \$31,275; the total population is 2,242; the percent of population that is minority is 73.68%; the percent of the population that is below the poverty line is 40.09%; the number of owner occupied units is 314 and the number of renter units is 183. (Census information from FFIEC Geocoding for 2013).

### **Summary of Financial Structure**

This transaction involves an FHA 221(d)(4) loan originated by Pillar Capital Finance, LLC, and underwritten by Merchant Capital, LLC. Under the proposed structure, the Department will issue short-term, tax-exempt fixed rate bonds in an amount not to exceed \$4,300,000 that will be collateralized with the proceeds of a taxable FHA mortgage loan. The bond proceeds will be utilized for project costs and as bond proceeds are drawn down, the proceeds from the FHA loan are simultaneously drawn and placed in an escrow account for the benefit of the bondholders. The mortgage loan, therefore, will be secured by eligible investments including obligations of the United States or money market mutual funds rated “AAA” at all times which offers protection to the bondholder.

The bond mortgage will be subordinate in lien position to the FHA mortgage but as previously indicated, the bond indebtedness will also be cash collateralized as long as the bonds are outstanding. The bonds will remain outstanding through the construction and lease-up period, estimated between 12-16 months, and will be retired after this period resulting in a low interest rate, currently estimated to be 5.00%. Given the cash collateralization, the transaction minimizes risk to the Department and also allows for volume cap to be utilized at a time when few bond transactions are being done due to various market factors affecting the rates on tax-exempt bonds. The final maturity date of the bonds, which is ultimately dependent upon the placement in service date, is not expected to extend beyond June 1, 2017, whereas the FHA mortgage will have a 40-year term and amortization.

## RESOLUTION NO. 14-027

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (NORTHCREST APARTMENTS), SERIES 2014; 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 (Northcrest Apartments), Series 2014 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of obtaining funds to finance 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 DHI NC Housing, LP, a Texas limited partnership (the "Borrower") in order to finance the cost of acquisition, equipping and rehabilitation 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 June 13, 2013, declared its intent to issue its revenue bonds 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;

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 cost of acquisition, equipping and rehabilitation 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 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 Borrower will obtain a first lien mortgage loan from Pillar Capital Finance LLC (the "HUD Lender"), and the Board has determined that the HUD Lender, the Trustee, the Department, and the Borrower will execute and deliver a Loan Disbursement Procedures Agreement (the "Disbursement Agreement") pursuant to which the HUD Lender will deposit a portion of the proceeds of such 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, 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 Howard County, Texas; 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 of the Department 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 Purchase Contract (the "Bond Purchase Agreement") with Merchant Capital L.L.C. (the "Underwriter"), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Disbursement Agreement, the Official Statement 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 Bond 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 I, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond 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, 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 initial purchaser thereof pursuant to the Bond Purchase Agreement.

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 Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by the Chair or Vice Chair of the Board or the Executive Director of the Department of the Indenture and the Bond Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Bond Purchase Agreement and thereafter shall bear interest at the rates determined from time to time by the Remarketing Agent (as such term is defined in the Indenture) 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 1.5%; (ii) the aggregate principal amount of the Bonds shall not exceed \$4,300,000; (iii) the final maturity of the Bonds shall occur not later than June 1, 2017; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond 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 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 and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Howard County, Texas.

Section 1.6 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement 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, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.7 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 and the Borrower.

Section 1.8 Acceptance of the Note and the Bond Mortgage. That the form and substance of the 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 Note to the order of the Trustee without recourse.

Section 1.9 Approval, Execution, 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 Chair and Vice Chair of the Board and the Executive Director of the Department 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 Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department’s counsel.

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 & Giuliani LLP and Bates & Coleman, P.C., Co-Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 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 - Bond Purchase Agreement
- Exhibit F - Note
- Exhibit G - Bond Mortgage
- Exhibit H - Official Statement
- Exhibit I - Disbursement Agreement

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 I: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance 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 the Department's Co-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 Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, 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 to enter into any agreements relating thereto only to the extent permitted by the Indenture.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Merchant Capital L.L.C., or any other party identified in the Bond 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 Bond Purchase Agreement and the requirements of Co-Bond Counsel to the Department, 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 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 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 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 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 §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

*[Execution page follows]*

PASSED AND APPROVED this 8<sup>th</sup> day of May, 2014.

[SEAL]

---

J. Paul Oxer, Chair

ATTEST:

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Secretary

**EXHIBIT A**

**Description of Development**

Borrower: DHI NC Housing, LP, a Texas limited partnership

Development: The Development is a 68-unit 100% affordable multifamily community known as Northcrest Apartments, at 1002 North Main Street, Big Spring, Texas 79720. It consists of 11 residential apartment buildings with approximately 56,312 net rentable square feet. The unit mix will consist of:

16	one-bedroom/one-bath units
20	two-bedroom/one-bath units
32	three-bedroom/one-bath units
<hr/>	
68	Total Units

Unit sizes will range from approximately 643 square feet to approximately 947 square feet.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING

ON

ISSUE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS  
FOR  
NORTHCREST APARTMENTS

Howard County Library  
500 Main Street  
Big Spring, Texas

1:19 p.m  
Wednesday,  
August 28, 2013

PRESIDING: TERESA MORALES, TDHCA

*ON THE RECORD REPORTING*  
(512) 450-0342

P R O C E E D I N G S

1  
2 MS. MORALES: Good afternoon. My name is  
3 Teresa Morales, and I would like to proceed with the  
4 public hearing. Let the record show that it is 1:19 p.m.,  
5 Wednesday, August 28, and we are at the Howard County  
6 Library, located at 500 Main Street, Big Spring, Texas.

7 I am here to conduct the public hearing on  
8 behalf of the Texas Department of Housing and Community  
9 Affairs with respect to an issue of tax-exempt multifamily  
10 revenue bonds for a residential rental community.

11 This hearing is required by the Internal  
12 Revenue Code. The sole purpose of this hearing is to  
13 provide a reasonable opportunity for interested  
14 individuals to express their views regarding the  
15 development and the proposed bond issue.

16 No decisions regarding the development will be  
17 made at this hearing. The Department's board is scheduled  
18 to meet to consider this transaction on October 10, 2013.

19 In addition to providing your comments at this hearing,  
20 the public is also invited to provide comment directly to  
21 the board at any of their meetings. The Department staff  
22 will also accept written comments from the public up to  
23 5:00 p.m. on October 1, 2013.

24 The bonds for the Northcrest Apartments will be  
25 issued as tax-exempt multifamily revenue bonds in the



1 aggregate principal amount not to exceed \$4,300,000 and  
2 taxable bonds, if necessary, in an amount to be determined  
3 and issued in one or more series by the Texas Department  
4 of Housing and Community Affairs.

5 The proceeds of the bonds will be loaned to  
6 DHI NC Housing, LP, or a related person or affiliate  
7 entity thereof, to finance the acquisition and  
8 rehabilitation of a multifamily housing development  
9 described as follows: a 68-unit multifamily residential  
10 rental development to be constructed on approximately 4.81  
11 acres of land located at 1002 North Main Street, Big  
12 Spring, Howard County, Texas. The proposed multifamily  
13 rental housing community will be initially owned and  
14 operated by the borrower or a related person or affiliate  
15 there of.

16 Let the record show that there are no  
17 attendees; therefore, the meeting is now adjourned. The  
18 time is now 1:21 p.m.

19 (Whereupon, at 1:21 p.m., the hearing was  
20 concluded.)

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C E R T I F I C A T E

IN RE: Northcrest Apartments

LOCATION: Big Spring, Texas

DATE: August 28, 2013

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Leslie Berridge before the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 08/30/2013  
(Date)

On the Record Reporting  
3636 Executive Ctr Dr., G-22  
Austin, Texas 78731

1g

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds with TDHCA as the Issuer, Resolution #14-028 and a Determination Notice of Housing Tax Credits for Pine Haven Apartments

**RECOMMENDED ACTION**

**WHEREAS**, the Board approved the inducement resolution for Pine Haven Apartments at the June 13, 2013, Board meeting;

**WHEREAS**, approval of the inducement allowed staff to submit the application to the Bond Review Board (“BRB”) and a Certificate of Reservation was issued on January 29, 2014, with a bond delivery deadline of June 28, 2014; and,

**WHEREAS**, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of Multifamily Housing Revenue Bonds Series 2014 and the issuance of a Determination Notice for the Pine Haven Apartments;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of up to \$4,000,000 in tax-exempt Multifamily Housing Revenue Bonds Series 2014 for the Pine Haven Apartments, Resolution #14-028 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$138,598 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website is hereby approved in the form presented to this meeting; and,

**FURTHER RESOLVED**, that 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 under Chapter 1371, Texas Government Code, as amended, and under Chapter 2306, Texas Government Code, as amended, the Department’s Enabling Statute (the “Statute”), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. *(The Statute provides that the Department’s revenue bonds are issued without recourse on 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.)*

Pine Haven Apartments consist of the rehabilitation and acquisition of 64 existing units targeted to a general population in Marshall, Harrison County, and the site is currently zoned appropriately. The Certificate of Reservation from the BRB 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. All of the 64 total residential units will be rent and income restricted at 60% AMFI and there will be one employee occupied unit.

*Organizational Structure and Previous Participation:* The Borrower is DHI PH Housing, LP, and the General Partner is DHI PH Southwest Preservation, LLC, comprised of DHI Holding, LLC, of which Tom Dawson is the sole member, Juniper Housing, LLC, of which Terrance Coyne is the sole member, and Tim Fluetsch, as an individual. EARAC met on April 28, 2014, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews found in 10 TAC §1.5. There was no dissenting vote cast relating to the review and EARAC concurred that there were no previous participation review issues raised to warrant a recommendation of denial.

*Public Hearing:* A public hearing for the proposed development was conducted by the Department on September 3, 2013; there was no one in attendance at the hearing. A copy of the hearing transcript is included behind this write-up. The Department has not received any letters of support or opposition for this development.

*Census Demographics:* The existing development is located at 2500 Southeast End Boulevard in Marshall. Demographics for the census tract (0205.01) include an AMFI of \$33,047; the total population is 3,111; the percent of population that is minority is 63.90%; the percent of the population that is below the poverty line is 15.96%; the number of owner occupied units is 605 and the number of renter units is 362. (Census information from FFIEC Geocoding for 2013).

### **Summary of Financial Structure**

This transaction involves an FHA 221(d)(4) loan originated by Pillar Capital Finance, LLC, and underwritten by Merchant Capital, LLC. Under the proposed structure, the Department will issue short-term, tax-exempt fixed rate bonds in an amount not to exceed \$4,000,000 that will be collateralized with the proceeds of a taxable FHA mortgage loan. The bond proceeds will be utilized for project costs and as bond proceeds are drawn down, the proceeds from the FHA loan are simultaneously drawn and placed in an escrow account for the benefit of the bondholders. The mortgage loan, therefore, will be secured by eligible investments including obligations of the United States or money market mutual funds rated “AAA” at all times which offers protection to the bondholder.

The bond mortgage will be subordinate in lien position to the FHA mortgage but as previously indicated, the bond indebtedness will also be cash collateralized as long as the bonds are outstanding. The bonds will remain outstanding through the construction and lease-up period, estimated between 12-16 months, and will be retired after this period resulting in a low interest rate, currently estimated to be 5.00%. Given the cash collateralization, the transaction minimizes risk to the Department and also allows for volume cap to be utilized at a time when few bond transactions are being done due to various market factors affecting the rates on tax-exempt bonds. The final maturity date of the bonds, which is

ultimately dependent upon the placement in service date, is not expected to extend beyond June 1, 2017, whereas the FHA mortgage will have a 40-year term and amortization.

## RESOLUTION NO. 14-028

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (PINE HAVEN APARTMENTS), SERIES 2014; 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 (Pine Haven Apartments), Series 2014 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of obtaining funds to finance 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 DHI PH Housing, LP, a Texas limited partnership (the "Borrower") in order to finance the cost of acquisition, equipping and rehabilitation 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 June 13, 2013, declared its intent to issue its revenue bonds 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;

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 cost of acquisition, equipping and rehabilitation 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 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 Borrower will obtain a first lien mortgage loan from Pillar Capital Finance LLC (the "HUD Lender"), and the Board has determined that the HUD Lender, the Trustee, the Department and the Borrower will execute and deliver a Loan Disbursement Procedures Agreement (the "Disbursement Agreement") pursuant to which the HUD Lender will deposit a portion of the proceeds of such 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, 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 Harrison County, Texas; 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 of the Department 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 Purchase Contract (the "Bond Purchase Agreement") with Merchant Capital L.L.C. (the "Underwriter"), and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Disbursement Agreement, the Official Statement 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 Bond 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 I, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the Bond 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, 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 initial purchaser thereof pursuant to the Bond Purchase Agreement.

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 Bond Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by the Chair or Vice Chair of the Board or the Executive Director of the Department of the Indenture and the Bond Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Bond Purchase Agreement and thereafter shall bear interest at the rates determined from time to time by the Remarketing Agent (as such term is defined in the Indenture) 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 1.5%; (ii) the aggregate principal amount of the Bonds shall not exceed \$4,000,000; (iii) the final maturity of the Bonds shall occur not later than June 1, 2017; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Bond 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 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 and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Harrison County, Texas.

Section 1.6 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Bond Purchase Agreement 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, the Underwriter, and/or any other parties to the Bond Purchase Agreement, as appropriate.

Section 1.7 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 and the Borrower.

Section 1.8 Acceptance of the Note and the Bond Mortgage. That the form and substance of the 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 Note to the order of the Trustee without recourse.

Section 1.9 Approval, Execution, 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 Chair and Vice Chair of the Board and the Executive Director of the Department 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 Bond Purchase Agreement and as may be approved by the Executive Director of the Department and the Department’s counsel.

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 & Giuliani LLP and Bates & Coleman, P.C., Co-Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.12 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 - Bond Purchase Agreement
- Exhibit F - Note
- Exhibit G - Bond Mortgage
- Exhibit H - Official Statement
- Exhibit I - Disbursement Agreement

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 I: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Finance 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 the Department's Co-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 Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, 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 to enter into any agreements relating thereto only to the extent permitted by the Indenture.

Section 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Merchant Capital L.L.C., or any other party identified in the Bond 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 Bond Purchase Agreement and the requirements of Co-Bond Counsel to the Department, 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 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 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 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 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 §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

*[Execution page follows]*

PASSED AND APPROVED this 8<sup>th</sup> day of May, 2014.

[SEAL]

---

J. Paul Oxer, Chair

ATTEST:

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Secretary

**EXHIBIT A**

**Description of Development**

Borrower: DHI PH Housing, LP, a Texas limited partnership

Development: The Development is a 64-unit 100% affordable multifamily community known as Pine Haven Apartments, at 2500 Southeast End Boulevard, Marshall, Texas 75670. It consists of 8 residential apartment buildings with approximately 52,872 net rentable square feet. The unit mix will consist of:

16	one-bedroom/one-bath units
40	two-bedroom/one-bath units
8	three-bedroom/two-bath units
<hr/>	
64	Total Units

Unit sizes will range from approximately 651 square feet to approximately 1,012 square feet.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING

ON

ISSUE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS  
FOR  
PINE HAVEN APARTMENTS

Marshall Public Library  
300 S. Alamo Boulevard  
Marshall, Texas

1:05 p.m  
Tuesday,  
September 3, 2013

PRESIDING: SHANNON ROTH, TDHCA

*ON THE RECORD REPORTING*  
(512) 450-0342



P R O C E E D I N G S

1  
2 MS. ROTH: Good evening. My name is Shannon  
3 Roth, and I would like to proceed with the public hearing.

4 Let the record show that it is 1:05 p.m., Tuesday,  
5 September 3, 2013. We are at the Marshall Public Library,  
6 located at 300 South Alamo Boulevard, Marshall, Texas.

7 I'm here to conduct the public hearing on  
8 behalf of the Texas Department of Housing and Community  
9 Affairs with respect to an issuance of tax-exempt  
10 multifamily revenue bonds for a residential rental  
11 community.

12 This hearing is required by the Internal  
13 Revenue Code. The sole purpose of this hearing is to  
14 provide a reasonable opportunity for interested  
15 individuals to express their views regarding the  
16 development and the proposed bond issuance.

17 No decisions regarding the development will be  
18 made at this hearing. The Department's board is scheduled  
19 to meet to consider this transaction on October 10, 2013.

20 In addition to providing your comments at this hearing,  
21 the public is also invited to provide comment directly to  
22 the board at any of their meetings. Department staff will  
23 also accept written comments from the public up to 5:00  
24 p.m. on October 1, 2013.

25 The bonds for the Pine Haven Apartments will be

1 issued as tax-exempt multifamily revenue bonds in the  
2 aggregate principal amount not to exceed \$4 million and in  
3 taxable bonds, if necessary, in an amount to be determined  
4 and issued in one or more series by the Texas Department  
5 of Housing and Community Affairs.

6 The proceeds of the bonds will be loaned to  
7 DHI PH Housing, LP, or a related person or affiliate  
8 entity thereof, to finance the acquisition and  
9 rehabilitation of a multifamily housing development  
10 described as follows: a 64-unit multifamily residential  
11 rental development to be constructed on approximately 4.1  
12 acres of land located at 2500 Southeast End Boulevard,  
13 Marshall, Harrison County, Texas. The proposed  
14 multifamily rental housing community will be initially  
15 owned and operated by the borrower or a related person or  
16 affiliate there of.

17 Let the record show that there are no  
18 attendees; therefore, the meeting is now adjourned, and  
19 the time is 1:07 p.m.

20 (Whereupon, at 1:07 p.m., the hearing was  
21 concluded.)

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C E R T I F I C A T E

IN RE: Pine Haven Apartments

LOCATION: Marshall, Texas

DATE: September 3, 2013

I do hereby certify that the foregoing pages, numbers 1 through 4, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Barbara Wall before the Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 09/06/2013  
(Date)

On the Record Reporting  
3636 Executive Ctr Dr., G-22  
Austin, Texas 78731

1h

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**MAY 10, 2014**

Presentation, Discussion, and Possible Action to approve a Land Use Restriction Agreement (“LURA”) Amendment for Parks at Wynnewood in Dallas (#95081/#93057)

**RECOMMENDED ACTION**

**WHEREAS**, in 1995 the Parks at Wynnewood Apartments received an award of 9% Housing Tax Credits in 1995 for the rehabilitation of 404 multifamily units serving the general population in Dallas, Texas;

**WHEREAS**, the Board approved a 2013 competitive (9%) application for Wynnewood Family Housing (#13234), which is the second phase of a multi phase re-development of the existing development;

**WHEREAS**, the Applicant for Wynnewood Family Housing (#13234) is requesting a partial temporary suspension of the original existing LURA during the construction of 22 units in eight buildings, and approval to amend the original LURA permanently upon construction completion to delete these eight residential buildings and replace them with the one new building which will comprise this phase of the Wynnewood Family Housing development;

**WHEREAS**, the Applicant is requesting the release of another 3.982 acre portion of the original parcel;

**WHEREAS**, Staff does not recommend the release of the 3.982 acre portion continuing to retain this acreage under the existing LURA does not impede the Applicant’s ability to execute a new LURA;

**WHEREAS**, pursuant to 10 TAC §10.405(b), Board approval is required for any change that would result in a reduction in the number of Low-Income Units (albeit temporary in this case) and the Owner has complied with the amendment requirements in Texas Government Code §2306.6712 and 10 TAC §10.405(b); and,

**WHEREAS**, approval of the changes proposed does not negatively impact the long term viability of the original development or the amount of tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the amendment request to release a 3.982 acre portion from the LURA of the Parks at Wynnewood is denied; and

**RESOLVED**, that the amendment request to suspend temporarily the enforcement of the LURA for the eight residential buildings and 22 existing units of the Housing Tax Credit LURA for the Parks at Wynnewood during the period of construction ending no later than December 31, 2015 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**

Parks at Wynnewood was approved for tax credits in 1995 to rehabilitate a total of 404 multifamily units targeted toward the general population. In 2011 the Board approved a forward commitment for Wynnewood Seniors Housing development, which was the first phase of a multi phase re-development of the entire development. This development exists on 48 acres and the owner has been working with the community to develop more income diverse multifamily and single family housing on the property. The tax credit application for phase one, Wynnewood Seniors, clearly required that the new elderly development would be carved out of, and ultimately excluded from, the original existing Parks at Wynnewood tax credit property. The original LURA for the Parks at Wynnewood required that 404 low income units be in service and target the general population throughout the compliance period. However, construction of the approved Wynnewood Seniors development, which required the demolition of some of the residential buildings and units, as well as a change in the target population, would be in conflict with the original LURA if approved for 2011 credits. Therefore, in 2011, the Applicant requested and received a material LURA amendment and approval for a 24-month temporary suspension of the existing LURA and extended the affordability of the LURA by two years. The Applicant also requested and received approval for a change in the target population from general to elderly for a portion of the original site. The Board approved the Applicant's request at its March 2011 meeting, and the LURA for the Parks at Wynnewood was ultimately amended to release the portion of the site dedicated to the new re-developed Wynnewood Seniors phase as well as to reduce the number of low income units required at the existing Parks at Wynnewood development, by 108 units, which is the number of original tax credit units located on the portion released. This resulted in a total of 296 units remaining on the existing LURA for the original Parks at Wynnewood Apartments.

The Board has since approved a 2013 competitive application for Wynnewood Family Housing (#13234), which is the second phase of the re-development of Parks at Wynnewood. The Applicant is currently requesting an amendment to the LURA similar to that which was approved for the first phase. In order to commence construction on the newly approved 2013 family development it will be necessary to relocate some of the current tenants and demolish eight residential buildings and 22 existing units, which would place the Parks at Wynnewood in noncompliance with the original LURA during demolition and reconstruction. Therefore, the

Applicant is seeking approval for a temporary suspension of the existing Parks at Wynnewood LURA as it relates to these specific residential buildings/units that will be demolished. The Applicant is also requesting approval to release the portion (3.982 acres) of the remaining Parks at Wynnewood from the Parks at Wynnewood LURA. This portion of land and the 22 units will be encumbered by a new LURA for the 2013 Wynnewood Family Housing development. The request further proposes that the owner should not be subject to the right of first refusal requirement of the original LURA because only a portion of the development is being sold, and the sales agreement was entered into prior to the date of the first amendment to the LURA.

Discussions between staff and the Applicant's counsel regarding the request concluded that a temporary suspension of the existing Parks at Wynnewood LURA would be necessary so that construction of the family phase would not place the property in noncompliance. However, staff does not believe that an ultimate release of the 3.982 acres from the existing LURA is necessary since the new proposed family development will target the same population as the existing, original LURA requires. Additionally, any further amendment to the LURA would not be required except to amend for the eight residential buildings that will be demolished and replaced with the one new building that will encompass the new Wynnewood Family Housing phase. Both the existing/amended Parks at Wynnewood LURA and the new Wynnewood Family Housing LURA will run concurrently.

Staff posted a previous recommendation in anticipation of bringing this item to the April Board meeting; however, it was withdrawn by the owner because of a requirement proposed by staff to extend the affordability period of the LURA for the same length of time as the period of construction that the 22 units would not be rented to low income households. On April 11, 2014, the owner submitted a request for reconsideration of that extension requirement with the justification that the original LURA had already been extended two years during the construction period for phase one. The letter states that the 1995 LURA was already amended to extend the term by increasing it for two years which was negotiated with the Department when the first phase of redevelopment was under discussion. The owner explains that when requesting the material LURA amendment during the first phase, a two-year extension of the 1995 LURA was offered because phase one of the redevelopment would require the demolition of 108 units of housing. This demolition left 296 remaining units of the original Parks at Wynnewood available during the two-year construction period for phase one, instead of the 404 units required under the 1995 LURA. To compensate, the Parks owner agreed to extend the 1995 LURA an additional two years.

After further discussion, staff agrees that the extension should not be required as part of this amendment. The affordability period required by the original LURA for this property was for 35 years. The term of the LURA was previously extended by two years for all units, but the owner only took the units and buildings out of service that were part of that first phase in order to demolish and reconstruct them. Although to date none of the buildings that are part of the current second phase of redevelopment have been taken out of service, they still are subject to that additional two years of affordability. Therefore the units that are subject to this request will ultimately provide the full original 35 years of affordability. The specific buildings that will be demolished and reconstructed are listed below:

Building 31/BIN 95-00164  
Building 33/BIN 95-00166  
Building 35/BIN 95-00168  
Building 37/BIN 95-00170

Building 32/BIN 95-00165  
Building 34/BIN 95-00167  
Building 36/BIN 95-00169  
Building 38/BIN 95-00171

The owner has complied with the amendment and notification requirements under the Department's rule at Government Code §2306.6712 and 10 TAC §10.405(b) and is providing the opportunity for public input. The public hearing was held at 6:30 p.m. on March 25, 2014. No negative public comment was received.

Staff now recommends approval to suspend enforcement of compliance monitoring of the existing Parks at Wynnewood (#95081) LURA for the eight buildings (22 units) listed herein until construction is complete; but no later than December 31, 2015. Staff further recommends that upon expiration of the temporary construction period, a permanent amendment to the Parks at Wynnewood LURA be completed to delete and replace the eight residential buildings demolished during construction with the one new residential building which will encompass phase two of the Wynnewood Family Housing development. Staff is recommending that the requested 3.982 acres not be released from the original LURA as it may overlap in time without inherently being in conflict with the new LURA and failing to do so would require an additional permanent reduction in the number of units in the original LURA.



# COATS | ROSE

*A Professional Corporation*

TAMBA A. DULA  
OF COUNSEL

tdula@coatsrose.com  
Direct Dial  
(713) 653-7322  
Direct Fax  
(713) 890-3918

March 7, 2014

**By Email to [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)**

Ms. Raquel Morales  
Senior Asset Manager – Asset Management  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

RE: TDHCA # 95081/ 93057; Parks at Wynnewood, Dallas, Dallas County, Texas;  
Request for Partial Release and Material LURA Amendment.

Dear Raquel:

This letter requests changes to the existing Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits for Parks at Wynnewood (copy attached as Exhibit A), as amended by that certain First Amendment dated May 15, 2013, but to be effective as of December 5, 1995 (the “First LURA Amendment” - copy attached as Exhibit B). The Original LURA and the First LURA Amendment are sometimes hereafter collectively referred to as the “Current LURA.” The purpose of amending the Current LURA is to partially release from the original tract the 3.982 acres which is the development site for Wynnewood Family Housing (TDHCA # 13234). A new Land Use Restriction Agreement will be recorded against the 3.982 acres to reflect restrictions agreed to be imposed upon the Wynnewood Family Housing development pursuant to its 2013 Housing Tax Credit Application.

Wynnewood Family Housing (the “Family Development”) is the second phase of a redevelopment of Parks at Wynnewood. The process that we are requesting be adopted for amending the Current LURA and establishing a new Land Use Restriction Agreement for the Family Development was developed for the first phase of this redevelopment program.

The first phase was Wynnewood Seniors Housing (the “Seniors Development”) (TDHCA # 10044 / 11003) which was placed into service in December 2013. In order to construct the Seniors Development without being in default on the Original LURA, the 8.4528 acres Seniors Development site was partially released from the Original LURA (copy attached as Exhibit C).

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307  
Phone: 713-651-0111 Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)

The First LURA Amendment was then executed to (i) remove the buildings that were demolished in connection with the first phase of redevelopment, (ii) update the restrictions to reflect fewer units, and (iii) clarify that the Right of First Refusal applies to a sale of the Parks at Wynnewood Project after January 1, 2014. The Seniors Development site was restricted appropriately through the recordation of a Declaration of Land Use Restriction Agreement (copy attached as Exhibit D) consistent with the characteristics of the Seniors Development as proposed in its 2010 Housing Tax Credit Application. We request that this arrangement be used again in connection with the Family Development.

The Family Development is anticipated to close on equity and construction financing in May 2014. Wynnewood Family Housing, LP (“Project Owner”) will purchase the 3.982 acres from WCH Limited Partnership pursuant to a Purchase and Sale Agreement dated January 7, 2013, as amended by a First Amendment dated February 27, 2013, but to be effective as of January 7, 2013, and a Second Amendment dated effective October 31, 2013. We believe that the proposed sale of the Family Development site is not clearly subject to the Right of First Refusal as set out in the First LURA Amendment because (i) the proposed sale is of only a portion of the Parks at Wynnewood Project, and (ii) the Purchase and Sale Agreement was entered into prior to the date that the First LURA Amendment was signed. Accordingly, we think that the best way to handle the second phase of redevelopment is the same manner in which the first phase was accomplished: with a partial release of the 3.982 acres from the Current LURA, a new amendment to the Current LURA to update the number of units and buildings covered by it, and the execution of a new Land Use Restriction Agreement with regard to the 3.982 acres, to be recorded concurrently with the transfer of title to the site.

In this context, we are providing the following information, consistent with TDHCA requirements for requests for material LURA amendments:

- 1. Factors that give rise to the request:** The Family Development is the second phase in a planned redevelopment of the Parks at Wynnewood. Parks at Wynnewood was originally a 48-acre, 404-unit tax credit development serving the general population. It completed its 15-year Compliance Period on December 31, 2009. The Parks at Wynnewood consists of barrack-style apartments originally built in the 1940s and is now functionally obsolescent with upkeep becoming increasingly expensive. The phased redevelopment started with a 140-unit development for seniors that received a 2011 Forward Commitment of tax credits and was placed in service in December 2013. The second phase of the redevelopment received an allocation of 2013 Housing Tax Credits. It will provide modern affordable housing designed for 21<sup>st</sup> century living for 160 families, with one additional unit for a resident manager. In order to commence construction on the Family Development, it will be necessary to relocate current tenants and demolish 8 existing buildings (22 existing units). Such action would place the Parks at Wynnewood in noncompliance with the Current LURA.
- 2. Continuing compliance with applicable legal requirements:** The amendment requested will release the Family Development site from the Current LURA through a partial release. The Current LURA will also be amended to cover approximately 35.9739 acres, require 136 units of housing for general public use, and amend building

identification numbers accordingly. The number of units on the 35.9739 acre site to be occupied by residents at 50% of Area Median Gross Income (“AMGI”) will be changed from 30 to 14, and all of the remaining units at the 35.9739-acre site will be restricted to residents at 60% of AMGI. The Right of First Refusal in the Current LURA will still be required upon the sale of the 35.9739 acres left in the Existing Development. A new Land Use Restriction Agreement will be simultaneously recorded against the Family Development site, which will allow 24 months abeyance of restrictive covenants for tenant relocation, demolition and construction, and then will require that 160 units of housing be maintained for the General population over a new 15-year Compliance Period and an additional 27-year Extended Use Period (the 25-year Extended Use Period promised by the Senior Development’s tax credit application, plus an additional 2 years to compensate for the 24-month tenant relocation-demolition-construction period). The tenant income restrictions will be 10% (16 units) at 30% AMGI; 40% (64 units) at 50% AMGI; and the remaining 50% (80 units) at 60% AMGI. The Right of First Refusal promised in the Family Development’s tax credit application will also be included in the new LURA.

3. **Financial feasibility:** The Family Development’s updated financial projections were submitted to the TDHCA’s Real Estate Analysis division (“REA”) for review in connection with the Housing Tax Credit allocation. The Project Owner stands ready to provide any additional information that may be needed by REA.
4. **Operating projections including reserves:** The updated financial projections for the Family Development will include an operating reserve (required by the proposed lender) of six (6) months of operating expenses and debt service.
5. **Addressing the needs of affected tenants:** The Family Development site is not subject to the Uniform Relocation Act, however, the tenants will receive relocation assistance in accordance with City of Dallas requirements. At this time it is believed that all the tenants who will be relocated will be able to move into similar housing elsewhere on the Parks at Wynnewood site with the exception of one 60% AMGI tenant and one Housing Choice Voucher tenant. It is possible that additional units will become available to accommodate these tenants prior to commencement of demolition. The Tenant Relocation Plan has been provided to HUD, and the financials include a \$150,000 budget for relocation expenses.
6. **Addressing rights of first refusal:** The proposed conveyance of the Family Development site to the Project Owner would be a preferred conveyance under the TDHCA’s current procedure for implementing the Right of First Refusal, since the Project Owner will be a tax credit limited partnership that is administered by a sole general partner which is a subsidiary of City of Dallas Community Development Corporation, a certified CHDO. Additionally, the Right of First Refusal requirement for the remainder of the Parks at Wynnewood will remain effective, and the new Land Use Restriction Agreement for the Family Development will also contain a Right of First Refusal, as promised in the tax credit application.

7. **Addressing the length of the LURA:** The 1995 LURA will be in effect until December 31, 2032, which reflects an increase in term of two years, which was negotiated with the TDHCA when the first phase of redevelopment was under discussion. The new Land Use Restriction Agreement on the Family Development will be for a 37-year affordability period, representing 2 years during relocation-demolition-construction; and a 35-year Extended Use Period (per the tax credit application).
  
8. **The interest of the community and others:** Central Dallas Community Development Corporation and Banc of America Community Development Corporation (collectively, the "Sponsors") have hosted and participated in numerous public hearings and meetings to discuss the proposed redevelopment of Parks at Wynnewood as a whole – initially in connection with the first phase redevelopment of the Seniors development, and later through public comment opportunities afforded during charrettes hosted by the City of Dallas in connection with the Master Planning initiated in connection with the Family Development. The Sponsors have worked with Wynnewood North Neighborhood Association to solicit suggestions concerning land use and design in connection with the redevelopment. For the Family Development, the Sponsors met separately with Beckleywood Neighborhood Association because the Family Development site backs up against their area of interest. Additionally, the City Councilmember for District 1 in Dallas has been instrumental in assisting in the planning of the redevelopment project as a whole. Finally, a Public Hearing with regard to the proposed material LURA Amendment has been tentatively scheduled for Thursday, March 20, 2014, at 6:30 p.m. in the Wynnewood Service Center at 2006 Didsbury Circle, Dallas TX 75224, subject to TDHCA approval.
  
9. **Other matters:** If you have any questions concerning the above, or if any additional information is required, please do not hesitate to call.

Thank you for your consideration of this request. In the event that TDHCA Staff concurs with the suggested manner of amending the Current LURA, we would request confirmation that we should continue our approach in this manner.

Sincerely,



Tamea A. Dula

Exhibits A-D

cc: Brian L. Roop  
Darren W. Smith  
John P. Greenan  
Barry J. Palmer

**EXHIBIT A**

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME  
HOUSING CREDITS**

**Parks at Wynnewood**

**[See attached]**

*The Parks @ Wynnewood*

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4801 9431 000000 9484 3213071 57.00  
57.00  
12/28/75

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW-INCOME HOUSING CREDITS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR LOW-INCOME HOUSING TAX CREDITS (this "Declaration"), dated as of 12-21-95, is made by and between \_\_\_\_\_ (together with its successors and assigns, the "Project Owner") and The Texas Department of Housing & Community Affairs, an instrumentality of the State of Texas and a public corporation (together with any successor to its rights, duties and obligations, the "Department"), and is given by Project Owner as a condition precedent to (the determination that the Project, as defined herein, satisfies the requirements of the State of Texas's Qualified Allocation Plan) the allocation of low-income housing tax credits (the "Tax Credits"), pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto (the "Code"), by the Department. This Declaration incorporates the extended low-income housing commitment required by Section 42(b)(6) of the Code.

•WCH Limited Partnership

**WITNESSETH:**

WHEREAS, the Project Owner is or shall be the Project Owner of a low income rental housing development, known as or to be known as \_\_\_\_\_ (the "Project Improvements"), on real property located in the City of DALLAS, County of DALLAS, State of Texas, more particularly described in Exhibit A hereto (the "Project Land") (the Project Improvements and the Project Land being collectively referred to herein as the "Project");

••The Parks At Wynnewood Apartments

WHEREAS, the Department has been designated by the Governor of the State of Texas as the housing credit agency for the State of Texas for the allocation of Tax Credits;

WHEREAS, the Project Owner has applied to the Department for an allocation of Tax Credits to the Project in an amount not to exceed \_\_\_\_\_ Tax Credit dollars (\$1,347,652);

•••One Million Three Hundred Forty-Seven Thousand Eight Hundred Fifty-Two

WHEREAS, the Project Owner has represented to the Department in the Project Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules (the "Department Rules"), that the Project Owner shall lease 100% of the units in the Project to individuals or families whose income is 60% % or less of the area median gross income (including adjustments for family size), as more specifically provided herein;

WHEREAS, the Department has determined that the Project would support an allocation of Tax Credits in the amount of \$ 1,042,989; (\$10,429,890 over 10 years)

WHEREAS, the Project Owner has represented to the Department in the Application that it will impose additional rent restrictions M/A (Optional, check if applicable);

WHEREAS, the Code requires as a condition precedent to the allocation of Tax Credits that the Project Owner execute, deliver and record in the real property records of the county in which the Project is located this Declaration in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Project Owner, under this Declaration, hereby declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project Land for the Term stated herein, are binding upon all subsequent owners and operators of the Project during such Term, and are not merely personal covenants of the Project Owner.

NOW, THEREFORE, in consideration of the premises set forth above, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Project Owner and the Department agree as follows:

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DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (LITC)  
PAGE 2

SECTION 1 - DEFINITIONS

(a) Unless the context otherwise requires, and in addition to those terms defined in the recitals set forth above, capitalized terms used in this Declaration shall have the following meanings:

"Area Median Gross Income" means the median gross income of the area in which the Project is located as determined by the Secretary of Housing and Urban Development for purposes of Section 42 of the Code, including adjustments for family size.

"Assumption Agreement" shall have the meaning assigned in Section 3(D) hereof.

"Compliance Period" means the period of 15 consecutive taxable years beginning with the first taxable year of the Credit Period, unless a longer period shall be stated in Appendix A hereto.

"Credit Period" means, with respect to any building in the Project, the period of ten taxable years beginning with the taxable year in which such building is placed in service or (at the election of the Owner) the following taxable year.

"Department Compliance Monitoring Procedures" means those procedures and requirements adopted or imposed by the Department, and modified by the Department from time to time, for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Project Owner and the Project with the provisions of Section 42 of the Code and to notify the Service of instances of noncompliance.

"Extended Use Period" means the period beginning with the first day of the Compliance Period and ending on the date which is 15 years after the end of the Compliance Period, unless a later date shall be set forth in Appendix A hereto or unless terminated earlier in accordance with Section 5 hereof.

"Gross Rent" means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. If the Tenant pays utilities directly, Gross Rent shall include any utility allowances prescribed by the Secretary.

"Income" means the income of a Tenant determined in a manner consistent with the requirements of Section 142(d)(2)(B) of the Code.

"Low-income" means, with respect to any Tenant, an income level not exceeding 30% or 60% of Area Median Gross Income, adjusted for family size, as provided in Section 4 hereof, unless an alternative income level shall be set forth in Appendix A hereto.

"Low-income Tenant" means a Tenant who when the Tenant originally occupied the Unit, had an income qualifying as Low-income. For so long as the Tenant occupies the particular Unit, the Tenant will remain a Low-income Tenant if the Tenant's income, upon the most recent income certification, does not exceed 140% of the applicable Low-income level.

"Low-income Unit" means a Unit in the Project that is occupied by a Low-income Tenant, is Rent-Restricted and meets the other requirements of Section 42 of the Code, in particular, Section 42(D)(3).

"Minimum Applicable Fraction" means the percentage with respect to a building in the Project, calculated as the lesser of the percentage of Units in such building which are Low-income Units or the percentage of floor space of all Units in such building which is in Low-income Units, all calculated as required pursuant to Section 42(c)(1) of the Code, which serves as the basis for the Department's allocation of Tax Credits to the building as provided in Section 4(c) hereof.

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (990)  
PAGE 3**

"Rent-Restricted" means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code.

"Secretary" means the Secretary of the Treasury of the United States.

"Service" means the United States Internal Revenue Service and any successor thereto.

"State" means the State of Texas.

"Tenant" means the individual or individuals entitled to occupy a Unit in the Project by lease or other legal relationship with the Project Owner.

"Term" shall have the meaning set out in Section 5 hereof.

"Unit" means any residential rental unit in the Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation; provided, however, that single room occupancy housing used on a nontransient basis may be treated as one or more Units.

(b) Any term or phrase which is used in this Declaration and not defined herein shall have the meaning, if any, assigned thereto in Section 43 of the Code, and if no meaning is assigned thereto in Section 42 of the Code, the meaning, if any, assigned in the Department Rules. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

**SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

(a) The Project Owner shall cause this Declaration and all amendments herein to be recorded and filed in the official public land deed records of the county in which the Project is located, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Project Owner shall immediately transmit to the Department an executed original of the recorded Declaration showing the deed, deed book and page numbers of record. The Project Owner agrees that the Department will not issue the Internal Revenue Service Form 8609, evidencing final allocation of the Tax Credits, unless and until the Department has received the recorded executed original of the Declaration.

(b) The Project Owner hereby declares and covenants, on behalf of itself and all future owners and operators of the Project during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project (i) shall be and are covenants running with the Project Land, encumbering the Project Land for the Term of this Declaration and binding upon the Project Owner's successors in title and all subsequent owners and operators of the Project Land, and (ii) shall bind the Project Owner (and the benefits shall inure to the Department and any past, present or prospective Tenant of the Project) and its respective successors and assigns during the Term of this Declaration. The Project Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the absence, that an equitable servitude has been created to insure that these restrictions run with the Project Land. For the Term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

(c) The Project Owner shall obtain the written consent of any existing lienholder of record (such as "Existing Lienholder") on the Project to this Declaration and the requirements hereof, including specifically the

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (LIRC)  
PAGE 4**

requirements of Section 5(c)(1) and Section 5(c) with respect to provisions which survive or may be revived after foreclosure, and such consent shall be in a form promulgated by the Department from time to time and shall be a condition precedent to the issuance by the Department of Internal Revenue Service Form 8609, evidencing final allocation of the Tax Credits. The Project Owner represents and warrants to the Department that attached hereto as Addendum A and made a part hereof is an executed and acknowledged Lienholder's Consent from each Existing Lienholder, if any, as of the effective date hereof.

**SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE PROJECT OWNER**

The Project Owner hereby represents, covenants and warrants as follows:

instead

(a) The Project Owner (i) is a corporation, duly organized and validly existing under the laws of the State of Texas, and is duly authorized and qualified to transact in the State any and all business contemplated by this Declaration and the Department Rules; (ii) possesses all requisite power, authority, license and permits to own its properties and assets and to conduct its business; and (iii) has all legal rights, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Project Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulation, or any order of any court or other department of the State or governmental body, (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Project Owner is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Project Owner will, at the time of execution and delivery of this Declaration, have good and indefeasible fee simple title to (or a leasehold interest extending at least two years beyond the end of the Extended Use Period in) the premises constituting the Project, free and clear of any lien or encumbrance, except those created by any loan documents relating to the Project, those which are created pursuant to this Declaration and those which are otherwise permitted encumbrances, as specifically set forth at Exhibit B hereto.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Project Owner threatened, against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

(e) The Project continues or will continue, and the Project Owner covenants, that commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Declaration, it shall maintain the Project as a "qualified low-income housing project", as defined in Section 42(g) of the Code.

(f) Each Unit in the Project contains separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project) which is to be used on other than a transient basis as provided in Section 42(i)(3) of the Code.

(g) The Project Owner agrees to comply fully and at all times with the requirements of Texas Law and the Federal Fair Housing Act.

(h) During the Term of this Declaration, the Project Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy to the extent required by Texas Law and under regulations prescribed by the Secretary, taking into account local health, safety, and building codes.

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (LHC)  
PAGE 5**

(i) The Project Owner covenants that it will not sell, transfer or exchange any portion of any building in the Project unless it sells, transfers or exchanges the entire building to the same person. Subject to the requirements of Section 42 of the Code and this Declaration, the Project Owner may sell, transfer or exchange the entire Project or any building in the Project at any time, provided that the Project Owner shall require, as a condition precedent to any such sale, transfer or exchange, that the successor owner and operator execute, in writing, in an Assumption Agreement acceptable to the Department, the Project Owner's obligations hereunder and under Section 42 of the Code, which Assumption Agreement shall be delivered to the Department in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any building in the Project. The Project Owner agrees that the Department may void any sale, transfer or exchange of the Project if the successor owner and operator fails to execute and deliver an Assumption Agreement or if the Project Owner or the successor owner and operator otherwise acts in contravention of this Section 3(i).

(j) The Project Owner agrees to notify the Department in writing prior to any sale, transfer or exchange of the entire Project or any building therein, and to provide to the Department the name(s) and address(es) of the prospective successor owner and operator of the Project or building.

(k) The Project Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Term of this Declaration, unless required by law.

(l) The Project Owner represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Project Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.

(m) The Project Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supercede any other requirements in conflict herewith.

**SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS**

The Project Owner represents, warrants and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that:

(a) (1)          At least 20% or more of the Units in the Project (are used) will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income.

(2)   X   At least 40% or more of the Units in the Project (are used) will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income.

*(Check applicable percentage election)*

(b) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Project Owner at least annually on the basis of the current income of such Low-Income Tenant. If, upon any such annual certification, the Tenant of a Low-Income Unit who was, at the last annual income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size to the Project is rented to a person who is not a Low-Income Tenant. A Low-Income Unit

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (1990)  
PAGE 6**

that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Project are rented to persons who are not Low-Income Tenants. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code), no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified in Section 42(i)(3)(D) of the Code.

(c) The Project will contain 400 Units, of which at least 40% will be Low-Income Units. The amount of Tax Credits allocated to the Project is based on the requirement that the Minimum Applicable Fraction for each building in the Project will be at least 100 percent or an specified, building-by-building, in Appendix A hereto. During the Term of this Declaration, Units at the Project shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants, such that each building in the Project shall at all times satisfy the Minimum Applicable Fraction for such building. The Project Owner's failure to ensure that each building in the Project complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the Service of Tax Credits, as well as other enforcement actions.

(d) The Project and the Project Owner are subject to additional and/or modified requirements, if any, set forth in Appendix A, which requirements are incorporated herein and made a part hereof.

(e) The Project Owner will not refuse to lease a Unit at the Project to a prospective Tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective Tenant as the holder of such voucher or certificate.

**SECTION 5 - TERM OF DECLARATION**

(a) This Declaration shall become effective with respect to a building in the Project on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Section 5(b) hereof (the "Term").

(b) Notwithstanding subsection (a) above, this Declaration shall terminate:

(1) with respect to any building in the Project, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure), unless the Secretary or his delegate determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period; or

(2) following the end of the Compliance Period, if the Project Owner has properly requested that the Department assist in procuring a "Qualified Contract", as defined in the Code, for the acquisition of a building and the Department is unable to procure a Qualified Contract. To properly request the Department's assistance in procuring a Qualified Contract for the acquisition of a building, the Project Owner must submit a written request to the Department no earlier than one (1) year prior to the expiration of the Compliance Period, or on the last day of any subsequent year of the Extended Use Period. The Department will have one (1) year from the date of the Project Owner's written request to find a buyer to acquire the Project Owner's interest in the building. The Department will attempt to procure a Qualified Contract for the acquisition of any building only once during the Extended Use Period.

(c) If this Declaration is terminated pursuant to subsection (b) above and notwithstanding anything herein to the contrary, the Tenant of any Low-Income Unit on the date of such termination shall be entitled to occupy such Unit in accordance with the provisions of this Declaration for a period of three years following such termination date, provided, however, that upon a showing of good cause, such Tenant's tenancy may be terminated or such Tenant evicted.

**SECTION 6 - ENFORCEMENT**

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (LHC)  
PAGE 7**

(a) The Project Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code and this Declaration. Moreover, the Project Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary in the opinion of the Department) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service, or the United States Department of Housing and Urban Development, from time to time, pertaining to the Project Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Project Owner acknowledges that the primary purpose for requiring compliance by the Project Owner with the restrictions provided in this Declaration is to assure compliance of the Project and the Project Owner with Section 42 of the Code, AND BY REASON THEREOF, THE PROJECT OWNER, IN CONSIDERATION FOR RECEIVING THE TAX CREDITS FOR THIS PROJECT, HEREBY AGREES THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER TENANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE PROJECT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Project Owner hereby further specifically acknowledges that the beneficiaries of the Project Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(c) The Project Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Project compliance under Section 42 of the Code.

(d) The Project Owner acknowledges that the Department is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Project Owner's and the Project's compliance with the requirements of Section 42 of the Code, and (ii) to notify the Service of any noncompliance which is found. The Project Owner agrees (I) to maintain records that substantiate and document such compliance, (II) to take all actions required by the Department pursuant to the Department Compliance Monitoring Procedures to assist or cooperate with the Department in monitoring such compliance, and (III) to pay the fee prescribed by the Department with respect to such monitoring.

**SECTION 7 - FEES**

(a) In order to compensate the Department for its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code, the Project Owner shall pay to the Department an annual administrative fee for the first twelve month period of this Declaration in the amount of \$15 per Unit required to be held available under Section 4(c) hereof, but in no event shall the fee be less than \$100.

(b) If the Department shall find the Project not to be in compliance with the terms hereof, the Project Owner shall pay to the Department an additional administrative fee in an amount prescribed from time to time by the Department, which amount for the first twelve month period of this Declaration, shall not exceed \$15 per Unit required to be held available under Section 4(c) hereof for additional monitoring and enforcement activities undertaken with respect to the Project. The administrative fee payable in the event of noncompliance shall be in addition to, and distinct from, the amount due pursuant to Section 7(a), as well as any reimbursements of costs and legal fees to which the Department may be entitled as a result of judicial enforcement action, and such fee shall be payable without respect to whether the Department undertakes or succeeds in judicial enforcement activities, and any right to be compensated therefor, for a period of up to three years following its most recent finding of noncompliance with respect to the Project.

(c) For each successive twelve month period following the initial twelve month period of this Declaration, the administrative fees payable to the Department hereunder shall be the amounts established for the most recent administrative fee, multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (2000)  
PAGE 8**

by the Bureau of Labor Statistics of the United States Department of Labor (or generally recognized successor to such Index) for the same twelve month period of time.

(d) Notwithstanding anything in Sections 7(a) and (c) of this Declaration to the contrary, Project Owner shall not be required to pay an annual administrative fee during the Term of this Declaration if prior to the issuance by the Department of Internal Revenue Service Form 8609, Project Owner has paid to the Department with respect to the Project a lump sum compliance monitoring fee for the entire Term as set forth in the Department Rules and the application submission procedures manual produced by the Department in connection with the allocation of Tax Credits. Provided, however, Project Owner will be required to pay any additional administrative fees owed from time to time during the Term of this Declaration in accordance with Section 7(b) hereof.

**SECTION 8 - MISCELLANEOUS**

(a) **Severability.** The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

(b) **Notices.** All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, delivered by hand, or delivered by any other method permitted by law, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

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**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (LHC)  
PAGE 9**

To the Department:

Texas Department of Housing & Community Affairs  
P.O. Box 13941 Capital Station  
Austin, Texas 78711-3941  
Attn: Low-Income Tax Credit Program

To the Project Owner:

NCH Limited Partnership  
312 West 7th Street  
Dallas, Texas 75208  
Attn: Mr. Duane McCluer

The Department, and the Project Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certifications or other communications shall be sent.

(c) **Amendment.** This Agreement may not be amended or modified except by written instrument signed by Project Owner and approved by Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the real property records in the county where the Property is located. Upon request by the Department, the Project Owner agrees that it will take all actions necessary to effect any amendment of this Declaration which may be necessary in the Department's sole discretion to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Tax Credits.

(d) **Subordination of Declaration.** This Declaration and the restrictions hereunder are subordinate to all loans and loan documents, if any, relating to the Project, except as provided in Sections 5(b)(1) and 5(e) hereof and in the Consent and Subordination of Existing Liensholder, with respect to each existing lienholder, attached hereto.

(e) **Governing Law.** This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.

(f) **Survival of Obligations.** The obligations of the Project Owner as set forth herein and in the Application shall survive the allocation of the Tax Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

95250 01514



**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING TAX CREDITS (LITC)  
PAGE 10**

(g) **Interpretation.** The Department's interpretation of this Declaration shall be controlling for purposes of determining whether (i) the Compliance Period and/or Credit Period shall have commenced, (ii) this Declaration shall have been terminated in accordance with Section 5 hereof, and (iii) the Additional Use Restrictions stated at Appendix A hereto, if any, shall have been complied with.

IN WITNESS WHEREOF, the Project Owner has caused this Declaration to be signed by its duly authorized representative, as of the day and year first written above.

**PROJECT OWNER:**

**WCH Limited Partnership**

By: *Donald McArthur*  
Name: Donald McArthur  
Title: President

*Wyandotte Community Housing Corp  
Managing General Partner  
WCH Limited Partnership*

**DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS**

By: *Larry Paul Manley*  
Name: Larry Paul Manley  
Title: Executive Director



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_



I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DORRIS McCLURE, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, executed the same voluntarily. Given under my hand, official seal this 21 day of 12, 1998.

Ged E. Settles  
Notary Public  
My Commission expires: \_\_\_\_\_

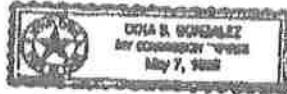
95250 01516





STATE OF Texas  
COUNTY OF Texas

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Larry D. Mandel whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, being informed of the contents of such document, executed the same voluntarily. Given under my hand, official seal this 27 day of December, 1996.



Diana B. Gonzalez  
Notary Public  
My Commission Expires: 5-7-98

95250 01517



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**ADDENDUM A TO DECLARATION**

*Consent and Subordination of Existing Lenders.*

95250 01510

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(TO BE EXECUTED BY EACH LIENHOLDER ON THE PROJECT AS OF THE EFFECTIVE DATE OF THE DECLARATION.)

**CONSENT AND SUBORDINATION OF LIENHOLDER**

The undersigned lienholder ("Lienholder") hereby consents to the encumbrance by Project Owner of the foregoing Declaration.

Lienholder hereby subordinates its lien(s) to the rights and interests created pursuant to Section 5(c) of the Declaration such that a foreclosure of its lien(s) shall not extinguish such rights and interests.

Lienholder acknowledges and agrees that pursuant to Section 5(b) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure (unless it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lienholder hereby acknowledges and agrees that the acquisition of this Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(a) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the project.

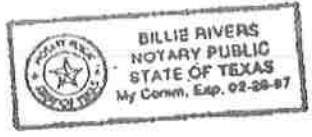
Executed to be effective on the 18th day of December, 1998  
Nations Bank Community Dev. Corp.  
By: [Signature]  
Name: Brian L. Roof  
Title: Vice President

THE STATE OF Texas  
COUNTY OF Dallas

This instrument was acknowledged before me on the 15 day of December, 1998 by BRIAN L. ROOF, VICE PRES of CORPORATION, on behalf of said

NATIONS BANK  
COMMUNITY DEV CORP.  
Billie Rivers  
Notary Public, State of Texas  
Billie RIVERS  
(Name - Typed or Printed)

2-28-99  
Date Commission Expires



(TO BE EXECUTED BY EACH LIENHOLDER ON THE PROJECT AS OF THE EFFECTIVE DATE OF THE DECLARATION.)

**CONSENT AND SUBORDINATION OF LIENHOLDER**

The undersigned lienholder ("Lienholder") hereby consents to the provisions by Project Owner of the foregoing Declaration.

Lienholder hereby subordinates in lien(s) to the rights and interests created pursuant to Section 5(b) of the Declaration such that a foreclosure of its lien(s) shall not extinguish such rights and interests.

Lienholder acknowledges and agrees that pursuant to Section 5(b) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure (unless it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lienholder hereby acknowledges and agrees that the acquisition of the Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(c) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the project.

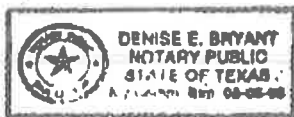
Executed to be effective the 15 day of December, 1995  
Nations Bank of Texas, N.A.

By: Eugene W. Bigham  
Title: Vice President  
Name: Eugene W. Bigham

THE STATE OF Texas  
COUNTY OF Dallas

This instrument was acknowledged before me on the 15 day of December, 1995 by Eugene W. Bigham, Vice President of Nations Bank, a banking corporation, on behalf of said corporation.

Denise E. Bryant  
Notary Public, State of Texas



(Name - Typed or Printed)

Date Commission Expires

95250 01520

(TO BE EXECUTED BY EACH LIENHOLDER ON THE PROJECT AS OF THE EFFECTIVE DATE OF THE DECLARATION.)

**CONSENT AND SUBORDINATION OF LIENHOLDER**

The undersigned Lienholder ("Lienholder") hereby consents to the execution by Project Owner of the foregoing Declaration.

Lienholder hereby subordinates its lien(s) to the rights and interests created pursuant to Section 5(c) of the Declaration such that a foreclosure of its lien(s) shall not extinguish such rights and interests.

Lienholder acknowledges and agrees that pursuant to Section 5(b) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure (whichever it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lienholder hereby acknowledges and agrees that the acquisition of the Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(c) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the project.

Executed to be effective the 21 day of December, 1995

CITY OF DALLAS

By: [Signature]

Name: Ramon F. Miguel

Title: Asst. City Manager

Approved by to form  
SAM LINDSAY, City Attorney

By [Signature]

Assistant City Attorney

\* City execution hereof is at the request of Project Owner.

THE STATE OF Texas :

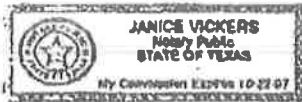
COUNTY OF Dallas :

This instrument was acknowledged before me on the 21 day of December, 1995 by Ramon F. Miguel, Asst. City Manager of City of Dallas Texas in behalf of said Corporation.

[Signature]  
Notary Public, State of Texas

Janice Vickers  
(Name - Typed or Printed)

10/22/98  
Date Commission Expires



95250 01521

(TO BE EXECUTED BY EACH LIENHOLDER ON THE PROJECT AS OF THE EFFECTIVE DATE OF THE DECLARATION.)

**CONSENT AND SUBORDINATION OF LIENHOLDER**

The undersigned Lienholder ("Lienholder") hereby consents to the execution by Project Owner of the foregoing Declaration.

Lienholder hereby subordinates its lien(s) to the rights and interests created pursuant to Section 5(c) of the Declaration such that a foreclosure of its lien(s) shall not extinguish such rights and interests.

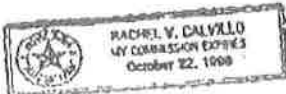
Lienholder acknowledges and agrees that pursuant to Section 5(b) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure (unless it is determined that such acquisition is part of an arrangement with Borrower a purpose of which is to terminate such period); provided, however, Lienholder hereby acknowledges and agrees that the acquisition of the Project by any party by foreclosure or instrument in lieu of foreclosure shall be subject to the provisions of Section 5(c) of the Declaration, which provisions shall continue in full force and effect for a period of three (3) years from the date of such acquisition; provided, further, that such provisions shall not apply during such period if and to the extent that compliance therewith is not possible as a consequence of damage, destruction, condemnation or similar event with respect to the project.

Executed to be effective the 15<sup>th</sup> day of December, 1995.

Department of Housing and Urban Development  
By: E. Ross Burton  
Name: E. Ross Burton  
Title: DIRECTOR  
Multifamily Housing

THE STATE OF Texas :  
COUNTY OF Tarrant :

This instrument was acknowledged before me on the 15<sup>th</sup> day of December, 1995 by E. Ross Burton of \_\_\_\_\_, on behalf of said \_\_\_\_\_.



Rachel V. Calvillo  
Notary Public, State of Texas

(Name - Typed or Printed)

Date Commission Expires

95250 01522

EXHIBIT 'A'TRACT 1:

Description of an 18.4520 acre tract of land, said tract being known as Wynnewood Gardens #4 and being that property designated as the Eighth Section of Wynnewood, an addition to the City of Dallas, Dallas County, Texas, as recorded in Volume 12, Pages 7B-A, B and C of the Map Records of Dallas County, Texas, said tract being in Block 8873 of the City of Dallas, said 18.4520 acre tract being that same property shown as Part 1, Part 2 and Part 3 on survey plats prepared by Powell & Powell Engineers in May 1948, and bearing Drawing Numbers P-115.48, P-115.49 and P-115.50, respectively, said 18.4520 acre tract being more particularly described as follows:

**BEGINNING** at a one half inch iron rod set for corner at the intersection of the North right-of-way line of Wynnewood Drive (70 feet wide) and the Easterly right-of-way line of Llewellyn Avenue (80 feet wide) said point being the Southwest corner of said Eighth Section of Wynnewood;

**THENCE** North 17 deg. 43 min. 07 sec. West, with said line of Llewellyn Avenue, a distance of 182.08 feet to a 5/8 inch iron rod found at the beginning of a curve to the right, the center of which bears North 72 deg. 16 min. 53 sec. East, a distance of 700.24 feet from said point;

**THENCE** with said curve to the right, transitioning from the East line of Llewellyn Avenue to the East right-of-way line of Pratt Street (50 feet wide) through a central angle of 25 deg. 22 min. 18 sec., an arc distance of 310.36 feet to a one half inch iron rod set at the end of said curve;

**THENCE** North 07 deg. 38 min. 09 sec. East, with the East line of Pratt Street, a distance of 15.10 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 82 deg. 20 min. 51 sec. a distance of 1884.86 feet from said point;

**THENCE** with said line of Pratt Street and with said curve to the right through a central angle of 06 deg. 54 min. 47 sec., an arc distance of 227.42 feet to a Niliti Nail set at the end of said curve;

**THENCE** North 14 deg. 33 min. 55 sec. East, with said line of Pratt Street, a distance of 3.30 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 75 deg. 26 min. 04 sec. East a distance of 3249.04 feet from said point;

**THENCE** with said line of said Pratt Street and with said curve to the right, at an arc distance of 71.01 feet a railroad spike set for line, in all, through a central angle of 11 deg. 45 min. 24 sec. an arc distance of 866.68 feet to a one half inch iron rod set at the end of said curve;

95250 01523

THENCE North 26 deg. 18 min. 20 sec. East, with said line of Pratt Street, a distance of 251.28 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 63 deg. 40 min. 40 sec. East a distance of 1884.88 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right, at an arc distance of 210.43 feet a one half inch iron rod set for line, in all, through a central angle of 18 deg. 50 min. 00 sec. an arc distance of 819.58 feet to a one-half inch iron rod set at the end of said curve;

THENCE North 45 deg. 09 min. 20 sec. East with said line of Pratt Street, a distance of 359.98 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 44 deg. 50 min. 40 sec. East a distance of 452.82 feet from said point;

THENCE with said line of Pratt Street, and with said curve to the right through a central angle of 15 deg. 58 min. 52 sec., an arc distance of 126.30 feet to a one half inch iron rod set at the end of said curve and at the beginning of a curve to the right the center of which bears South 28 deg. 51 min. 48 sec. East a distance of 125.00 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right, through a central angle of 80 deg. 37. min. 48 sec. an arc distance of 132.27 feet to a Hilti Nail set at the end of said curve and at the beginning of a curve to the right the center of which bears South 31 deg. 46 min. 00 sec. West a distance of 32.89 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right through a central angle of 90 deg. 00 min. 00 sec., an arc distance of 51.82 feet to a one half inch iron rod set at the end of said curve in the West right-of-way line of Zang Boulevard (126 feet wide);

THENCE South 31 deg. 48 min. 00 sec. West with said line of Zang Boulevard, a distance of 762.12 feet to a one half inch iron rod set at the beginning of a curve to the left the center of which bears South 58 deg. 14 min. 00 sec. East a distance of 3682.22 feet from said point;

THENCE with said line of Zang Boulevard and with said curve to the left, at an arc distance of 120.29 feet, a one half inch iron rod set for line, at an arc distance of 1108.80 feet, a one half inch iron rod set for line, in all, through a central angle of 26 deg. 34 min. 32 sec., an arc distance of 1000.68 feet, to a one half inch iron rod set for corner in the North line of Wynnewood Drive;

THENCE South 84 deg. 24 min. 15 sec. West with the North line of Wynnewood Drive a distance of 200.95 feet to the PLACE OF BEGINNING;

CONTAINING 803,788 square feet or 18.4520 acres of land, more or less.



TRACT II:

Description of 29.9557 acre tract of land, said tract being known as Wynnswood Gardens No. 5 and being that property designated as the Ninth Section of Wynnswood, an addition to the City of Dallas, Dallas County, Texas, as recorded in Volume 12, Page 214-A of the Map Records of Dallas County, Texas, said tract being in Block 5973 of the City of Dallas, said 29.9557 acre tract being that same property shown as Part 1, Part 2, Part 3 and Part 4 on survey plats prepared by Powell & Powell Engineers in June 1949 and being Drawing Numbers P-115.51, P-115.52 and P-115.53, respectively, said 29.9557 acre tract being more particularly described as follows:

BEGINNING at a one half inch iron rod found for corner in the East right-of-way line of Zang Boulevard (125 feet wide) said point being North 00 deg. 03 min. 00 sec. West a distance of 578.51 feet from the intersection of said line of Zang Boulevard with the North right-of-way line of Illinois Avenue (100 feet wide);

THENCE North 00 deg. 03 min. 00 sec. West with said line of Zang Boulevard, at 302.52 feet pass a one half inch iron rod set for line, in all, a distance of 376.34 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears North 89 deg. 57 min. 00 sec. East, a distance of 3767.22 feet;

THENCE with said line of Zang Boulevard and with said curve to the right, at an arc distance of 983.83 feet pass a one half inch iron rod set for line, in all, through a central angle of 31 deg. 49 min. 00 sec. an arc distance of 2086.41 feet to a one half inch iron rod set at the end of said curve;

THENCE North 31 deg. 46 min. 00 sec. East, at 23.72 feet pass a one half inch iron rod set for line, in all a distance of 1242.95 feet to a one half inch iron rod set at angle point;

THENCE North 38 deg. 44 min. 57 sec. East, with said line of Zang Boulevard a distance of 121.49 feet to a one half inch iron rod set for corner;

THENCE South 75 deg. 23 min. 30 sec. East a distance of 31.00 feet to a one half inch iron rod set for corner in the West line of a tract owned by the City of Dallas, said tract being the old Dallas Southern Traction Company right-of-way, said point being in a curve to the left the center of which bears South 75 deg. 23 min. 30 sec. East a distance of 1474.83 feet from said point;

THENCE with said curve to the left through a central angle of 13 deg. 00 min. 00 sec. an arc distance of 334.59 feet to a one half inch iron rod set at the end of said curve;

THENCE South 01 deg. 38 min. 40 sec. West a distance of 57.76 feet to a point in the center of the South Branch of Cedar Creek;

THENCE in a Southerly direction with the meanders of the center of South Branch of Cedar Creek the following courses and distances:

THENCE South 81 deg. 38 min. 40 sec. West a distance of 70.85 feet to an angle point;

THENCE South 46 deg. 12 min. 00 sec. West a distance of 100.00 feet to an angle point;

THENCE South 20 deg. 53 min. 40 sec. West a distance of 207.50 feet to an angle point;

THENCE South 14 deg. 05 min. 10 sec. East a distance of 103.00 feet to an angle point;

THENCE South 21 deg. 37 min. 45 sec. West a distance of 174.20 feet to an angle point;

THENCE South 08 deg. 24 min. 00 sec. East a distance of 242.80 feet to an angle point;

THENCE South 27 deg. 04 min. 45 sec. West a distance of 237.54 feet to an angle point;

THENCE South 28 deg. 08 min. 40 sec. West a distance of 212.41 feet to an angle point;

THENCE South 45 deg. 44 min. 10 sec. West a distance of 98.78 feet to an angle point;

THENCE South 21 deg. 18 min. 00 sec. West a distance of 198.85 feet to an angle point;

THENCE South 42 deg. 49 min. 00 sec. West a distance of 180.27 feet to an angle point;

THENCE South 22 deg. 53 min. 20 sec. West a distance of 223.32 feet to an angle point;

THENCE South 07 deg. 42 min. 45 sec. East, a distance of 107.12 feet to an angle point;

THENCE South 18 deg. 28 min. 00 sec. East a distance of 231.85 feet to an angle point;

THENCE South 08 deg. 28 min. 40 sec. West a distance of 187.07 feet to an angle point;

THENCE South 02 deg. 48 min. 10 sec. West a distance of 100.77 feet to an angle point;

THENCE South 14 deg. 07 min. 20 sec. West a distance of 45.04 feet to an angle point;

THENCE South 48 deg. 42 min. 00 sec. West a distance of 241.08 feet to an angle point;

THENCE South 01 deg. 49 min. 20 sec. East a distance of 138.06 feet to an angle point;

THENCE South 35 deg. 48 min. 15 sec. West a distance of 105.41 feet to an angle point;

THENCE South 05 deg. 29 min. 15 sec. East a distance of 135.35 feet to an angle point;

THENCE South 14 deg. 58 min. 55 sec. East a distance of 52.40 feet to an angle point;

THENCE South 72 deg. 47 min. 20 sec. East a distance of 53.21 feet to an angle point;

THENCE South 20 deg. 30 min. 55 sec. East a distance of 39.81 feet to an angle point;

THENCE South 56 deg. 04 min. 45 sec. West a distance of 85.07 feet to an angle point;

THENCE South 03 deg. 47 min. 50 sec. East a distance of 113.55 feet to an angle point for corner;

THENCE South 81 deg. 40 min. 30 sec. West, leaving South Branch of Cedar Creek, a distance of 153.01 feet to a one half inch iron rod found for angle point;

THENCE North 66 deg. 50 min. 00 sec. West a distance of 161.47 feet to the PLACE OF BEGINNING;

CONTAINING 1,304,870 square feet or 29.9557 acres of land, more or less.

## APPENDIX A

## ADDITIONAL USE RESTRICTIONS

(Check all items which apply.)

**Additional Occupancy Restrictions**

At least 41 Units in the Project must be occupied by Tenants at or below 50 % of Area Median Gross Income.

**Longer Compliance Period and Extended Use Period**

The Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of 33 consecutive taxable years, each commencing with the first year of the Credit Period.

**Supportive Services**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Education and after school program for children to be provided by the University of North Texas, or other comparable organization, if these

Community Based Board services can not be provided by The University of North Texas.

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall be governed by a community based board, the majority of whose members live in the Project's community.

**Housing for Agricultural Workers**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide housing for agricultural workers.

**Transitional Housing for the Homeless**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide transitional housing for homeless persons, on a non-transient basis, with supportive services designed to assist Tenants in locating and retaining permanent housing.

**Public Housing Waiting List**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner shall consider prospective Tenants referred to from the waiting list of the Housing Authority of Dallas.

**Material Participation by Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 41(b)(5)(C) of the Code shall own an interest in the Project and shall materially participate (within the meaning of Section 469(b) of the Code) in the development and operation of the Project.

95250 01528

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
APPENDIX A  
PAGE 2**

**IX Right of First Refusal to Tenant or Qualified Nonprofit Organization**

If at any time after the fifteenth year of the Compliance Period, the Project Owner shall determine to sell the Project, the Project Owner shall, prior to any such sale, notify the Department of its intent to sell the Project. If, within the 90-day period following receipt of such notice, the Department shall identify one or more qualified nonprofit organizations, within the meaning of Section 42(b)(5)(C) of the Code, or tenant organizations, any of which shall make a *bona fide* offer to purchase the Project for a purchase price equal to the sum of (i) the principal amount of outstanding indebtedness secured by the Project (other than indebtedness incurred within the 5-year period immediately preceding the date of said notice) and (ii) all Federal, State and local taxes incurred or payable by the Project Owner as a consequence of such sale, the Project Owner shall sell the Project pursuant to such offer. If the Project shall, in accordance with the Declaration, have a Minimum Applicable Fraction of less than 1, the *bona fide* offer from a tenant or qualified nonprofit organization to purchase the Project shall be no less than the sum of (i) the purchase price calculated in accordance with the preceding sentence multiplied by the Minimum Applicable Fraction and (ii) the fair market value of the non-Low-Income Units. If the Department or the Project Owner shall receive *bona fide* offers to purchase the Project from more than one tenant or qualified nonprofit organization, the Project Owner shall sell the Project to the tenant or qualified nonprofit organization selected by the Department on such basis as it shall determine appropriate. The Department shall have the right to adopt procedures for (i) identifying tenant or qualified nonprofit organizations willing to purchase the Project, (ii) evaluating *bona fide* offers to purchase the Project, and (iii) determining the purchase price of the Project pursuant to the provisions of this paragraph. The tenant or nonprofit organization's exercise of the right of first refusal shall not terminate the Extended Use Period under the terms of this Declaration.

**Senior Projects**

Throughout the Compliance Period, unless otherwise permitted by the Department  at least 80% of the Units must be restricted to households in which at least one family member is 55 years of age or older OR  100% of the Units must be restricted to households in which all household members are 62 years of age or older.

<sup>1/</sup> Note: The Federal Fair Housing Act requires, generally, that projects which are limited to occupancy by older persons either (i) be restricted to households in which all members are 62 years or older or (ii) provide significant facilities and services for the elderly or meet certain other requirements and be limited to households in which at least one member is 55 years or older. See 24 C.F.R. §§100.300-100.304 for exact requirements. All tax credit projects must comply with these requirements, as applicable under Federal law, in addition to the Declaration.

95250 01529

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
APPENDIX A  
PAGE 3

Minimum Applicable Fraction by Building

Building Identification	Tx-93- 00124	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00125	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00126	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00127	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00128	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00129	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00130	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00141	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00142	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00143	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00144	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00145	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00146	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00147	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00148	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00149	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00150	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00151	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00152	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00153	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00154	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00155	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00156	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00157	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00158	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00159	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00160	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00161	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00162	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00163	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00164	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00165	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00166	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00167	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00168	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00169	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00170	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00171	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00172	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00173	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00174	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00175	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00176	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00177	Minimum Applicable Fraction	100%

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
APPENDIX A  
PAGE 4**

**Minimum Applicable Fraction by Building**

Building Identification	Tx-93- 00176	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00179	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00180	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00181	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00182	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00183	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00184	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00185	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00186	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00187	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00188	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00189	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00190	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00191	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00192	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00193	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00194	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00195	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00196	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00197	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00198	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00199	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00200	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00201	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00202	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00203	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00204	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00205	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00206	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00207	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00208	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00209	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00210	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00211	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00212	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00213	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00214	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00215	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00216	Minimum Applicable Fraction	100%
Building Identification	Tx-93- 00217	Minimum Applicable Fraction	100%

95250 01531



County Deed Records

After filing, please return to:

Kenneth H. Mitchell  
1005 Study River Court North  
Beaumont, Texas 77626

95250 01532





Any person who shall make or cause to be made any of the  
 described and printed notices or other or more or more or  
 STATE OF TEXAS  
 COUNTY OF DALLAS  
 I hereby certify that the above and the date and time  
 thereof have been duly recorded in the public records  
 of the office of the County Clerk of Dallas County, Texas  
 on this 28th day of December, 1995.  
 COUNTY CLERK, Dallas County, Texas  
 Carl R. Bullock

FILED  
 95 DEC 28 PM 12:36  
 CARL BULLOCK  
 COUNTY CLERK  
 DALLAS COUNTY

95250 01533

**EXHIBIT B**

**FIRST AMENDMENT TO DECLARATION OF LAND USE RESTRICTIVE  
COVENANTS FOR LOW-INCOME HOUSING CREDITS**

**Parks at Wynnewood**

**[See attached]**



201300210550

AM 1/20

**FIRST AMENDMENT TO  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR LOW INCOME HOUSING CREDITS**

**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.**

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

This First Amendment to Declaration of Land Use Restrictive Covenants for Low Income Housing Credits ("First Amendment") is executed on May 15, 2013, to be effective as of December 5, 1995, by and between (i) **WCH LIMITED PARTNERSHIP**, a Texas limited partnership (together with its successors and assigns, the "Project Owner"), and (ii) the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (together with any successor to its rights, duties and obligations, the "Department").

**WITNESSETH:**

WHEREAS, effective December 21, 1995, the Project Owner and the Department executed that certain Declaration of Land Use Restrictive Covenants for Low Income Housing Credits (the "Declaration"), which was filed of record on December 28, 1995 and recorded in/under Clerk's File No. 199502509621, in Book 95250, Page 1506 of the Official Public Records of Dallas County, Texas (the "Records"), upon and against the real property described in Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, the Project Owner and the Department desire to amend the Declaration;

NOW, THEREFORE, for and in consideration of the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Project Owner and the Department agree as follows:

1. Section 4 – Income Restrictions/Rental Restrictions ("Section 4") shall be amended to read as set forth in Exhibit "B" attached hereto and made a part hereof;

2. Section 5 – Term of Declaration, subsection (a) shall be amended to read as follows:

“(a) This Declaration shall become effective with respect to a building in the Project on the first day of the Compliance Period for such building and shall terminate on December

31, 2032, unless this Agreement is earlier terminated pursuant to Section 5(b) hereof (the "Term")."

3. Appendix A – Additional Use Restrictions ("Appendix A") shall be amended to read as set forth in Exhibit "C" attached hereto and made a part hereof; and

4. All of the remaining terms and provisions of the Declaration shall be and remain in full force and effect and the parties hereto agree that all rights, duties and obligations contained in the Declaration are hereby ratified, confirmed, renewed, extended and brought forward.

5. This First Amendment shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Project Owner and the Department have executed this First Amendment as of the day and year first above written.


[Signature pages begin on next page.]

**PROJECT OWNER:**

**WCH LIMITED PARTNERSHIP**, a Texas limited partnership

By: Wynnewood Seniors Housing GP, LLC, a Texas limited liability company, its co-general partner

By: Central Dallas Community Development Corporation, a Texas nonprofit corporation, its sole member

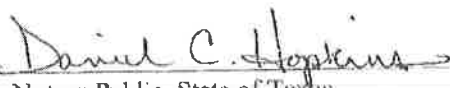
By:   
Name: John P. Greenan  
Title: Executive Director

THE STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared John P. Greenan, known to me or proven to me on the basis of satisfactory evidence to be the Executive Director of Central Dallas Community Development Corporation, a Texas nonprofit corporation, sole member of Wynnewood Seniors Housing GP, LLC, a Texas limited liability company, co-general partner of **WCH LIMITED PARTNERSHIP**, a Texas limited partnership, and that he executed the same as the act of such limited partnership for the purposes and consideration therein expressed, and in the capacity stated therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2<sup>nd</sup> day of July, 2013.

(Seal)


  
Notary Public, State of Texas



**PROJECT OWNER:**

**WCH LIMITED PARTNERSHIP**, a Texas limited partnership

By: Banc of America Community Development Corporation, a North Carolina corporation, its co-general partner

By:   
Name: Brian L. Reep  
Title: Senior Vice President

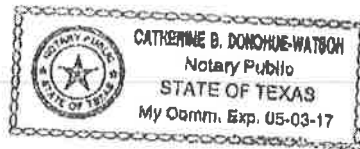
THE STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Brian L. Reep, known to me or proven to me on the basis of satisfactory evidence to be the Senior Vice President of Banc of America Community Development Corporation, a North Carolina corporation, co-general partner of **WCH LIMITED PARTNERSHIP**, a Texas limited partnership, and that he/she executed the same as the act of such limited partnership for the purposes and consideration therein expressed, and in the capacity stated therein.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 2<sup>nd</sup> day of July, 2013.

(Seal)

Catherine B. Donohue-Watson  
Notary Public, State of Texas



DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, a public and official  
agency of the State of Texas

By: Cari Garcia  
Name: Cari Garcia  
Duly Authorized Officer or Representative

THE STATE OF TEXAS   §  
  §  
  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on this 15<sup>th</sup> day of May, 2013,  
by Cari Garcia, duly authorized officer or representative of the  
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official  
agency of the State of Texas, on behalf of said agency.

(Seal)



Leah Sargent Rosas  
Notary Public, State of Texas

EXHIBIT A

DESCRIPTION OF THE PROPERTY

[See following five (5) page metes and bounds legal description, save and except 8.4528 acres released by a Partial Release from the Declaration recorded under File No. 201200274919, filed on September 17, 2012 in the Records.]



EXHIBIT "A"

TRACT I:

Description of an 18.4520 acre tract of land, said tract being known as Wynnewood Gardens #4 and being that property designated as the Eighth Section of Wynnewood, an addition to the City of Dallas, Dallas County, Texas, as recorded in Volume 12, Pages 78-A, B and C of the Map Records of Dallas County, Texas, said tract being in Block 5973 of the City of Dallas, said 18.4520 acre tract being that same property shown as Part 1, Part 2 and Part 3 on survey plats prepared by Powell & Powell Engineers in May 1949, and bearing Drawing Numbers P-115.48, P-115.49 and P-115.50, respectively, said 18.4520 acre tract being more particularly described as follows:

BEGINNING at a one half inch iron rod set for corner at the intersection of the North right-of-way line of Wynnewood Drive (70 feet wide) and the Easterly right-of-way line of Llewellyn Avenue (80 feet wide) said point being the Southwest corner of said Eighth Section of Wynnewood;

THENCE North 17 deg. 43 min. 07 sec. West, with said line of Llewellyn Avenue, a distance of 182.08 feet to a 3/8 inch iron rod found at the beginning of a curve to the right, the center of which bears North 72 deg. 16 min. 53 sec. East, a distance of 700.84 feet from said point;

THENCE with said curve to the right, transitioning from the East line of Llewellyn Avenue to the East right-of-way line of Pratt Street (50 feet wide) through a central angle of 25 deg. 22 min. 16 sec., an arc distance of 310.38 feet to a one half inch iron rod set at the end of said curve;

THENCE North 07 deg. 39 min. 08 sec. East, with the East line of Pratt Street, a distance of 15.10 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 82 deg. 20 min. 51 sec. a distance of 1884.88 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right through a central angle of 98 deg. 54 min. 47 sec., an arc distance of 227.42 feet to a Hilti Nail set at the end of said curve;

THENCE North 14 deg. 33 min. 58 sec. East, with said line of Pratt Street, a distance of 3.30 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 75 deg. 26 min. 04 sec. East a distance of 3249.04 feet from said point;

THENCE with said line of said Pratt Street and with said curve to the right, at an arc distance of 71.01 feet a railroad spike set for line, in all, through a central angle of 11 deg. 45 min. 24 sec. an arc distance of 685.68 feet to a one half inch iron rod set at the end of said curve;

THENCE North 26 deg. 19 min. 20 sec. East, with said line of Pratt Street, a distance of 251.28 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 63 deg. 40 min. 40 sec. East a distance of 1884.88 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right, at an arc distance of 210.43 feet a one half inch iron rod set for line, in all, through a central angle of 18 deg. 50 min. 00 sec. an arc distance of 819.56 feet to a one half inch iron rod set at the end of said curve;

THENCE North 45 deg. 08 min. 20 sec. East with said line of Pratt Street, a distance of 359.98 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 44 deg. 50 min. 40 sec. East a distance of 452.82 feet from said point;

THENCE with said line of Pratt Street, and with said curve to the right through a central angle of 15 deg. 58 min. 52 sec., an arc distance of 126.30 feet to a one half inch iron rod set at the end of said curve and at the beginning of a curve to the right the center of which bears South 28 deg. 51 min. 48 sec. East a distance of 125.00 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right, through a central angle of 60 deg. 37 min. 48 sec. an arc distance of 132.27 feet to a Hilti Nail set at the end of said curve and at the beginning of a curve to the right the center of which bears South 31 deg. 48 min. 00 sec. West a distance of 32.89 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right through a central angle of 90 deg. 00 min. 00 sec., an arc distance of 51.82 feet to a one half inch iron rod set at the end of said curve in the West right-of-way line of Zang Boulevard (125 feet wide);

THENCE South 31 deg. 48 min. 00 sec. West with said line of Zang Boulevard, a distance of 762.12 feet to a one half inch iron rod set at the beginning of a curve to the left the center of which bears South 58 deg. 14 min. 00 sec. East a distance of 3582.22 feet from said point;

THENCE with said line of Zang Boulevard and with said curve to the left, at an arc distance of 120.29 feet, a one half inch iron rod set for line, at an arc distance of 1108.80 feet, a one half inch iron rod set for line, in all, through a central angle of 26 deg. 34 min. 32 sec., an arc distance of 1800.89 feet, to a one half inch iron rod set for corner in the North line of Wynnewood Drive;

THENCE South 84 deg. 24 min. 15 sec. West with the North line of Wynnewood Drive a distance of 200.56 feet to the PLACE OF BEGINNING;

CONTAINING 803,768 square feet or 18.4520 acres of land, more or less.

TRACT II:

Description of 29.9557 acre tract of land, said tract being known as Wynnewood Gardens No. 5 and being that property designated as the Ninth Section of Wynnewood, an addition to the City of Dallas, Dallas County, Texas, as recorded in Volume 12, Page 214-A of the Map Records of Dallas County, Texas, said tract being in Block 5973 of the City of Dallas, said 29.9557 acre tract being that same property shown as Part 1, Part 2, Part 3 and Part 4 on survey plats prepared by Powell & Powell Engineers in June 1949 and being Drawing Numbers P-115.51, P-115.52 and P-115.53, respectively, said 29.9557 acre tract being more particularly described as follows:

BEGINNING at a one half inch iron rod found for corner in the East right-of-way line of Zang Boulevard (125 feet wide) said point being North 00 deg. 03 min. 00 sec. West a distance of 578.31 feet from the intersection of said line of Zang Boulevard with the North right-of-way line of Illinois Avenue (100 feet wide);

THENCE North 00 deg. 03 min. 00 sec. West with said line of Zang Boulevard, at 302.82 feet pass a one half inch iron rod set for line, in all, a distance of 378.34 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears North 89 deg. 57 min. 00 sec. East, a distance of 3757.22 feet;

THENCE with said line of Zang Boulevard and with said curve to the right, at an arc distance of 993.93 feet pass a one half inch iron rod set for line, in all, through a central angle of 31 deg. 49 min. 00 sec. an arc distance of 2088.41 feet to a one half inch iron rod set at the end of said curve;

THENCE North 31 deg. 45 min. 00 sec. East, at 23.72 feet pass a one half inch iron rod set for line, in all, a distance of 1242.95 feet to a one half inch iron rod set at angle point;

THENCE North 38 deg. 44 min. 57 sec. East, with said line of Zang Boulevard a distance of 121.49 feet to a one half inch iron rod set for corner;

THENCE South 75 deg. 23 min. 30 sec. East a distance of 31.00 feet to a one half inch iron rod set for corner in the West line of a tract owned by the City of Dallas, said tract being the old Dallas Southern Traction Company right-of-way, said point being in a curve to the left the center of which bears South 75 deg. 23 min. 30 sec. East a distance of 1474.69 feet from said point;

THENCE with said curve to the left through a central angle of 13 deg. 00 min. 00 sec. an arc distance of 334.59 feet to a one half inch iron rod set at the end of said curve;

THENCE South 01 deg. 36 min. 40 sec. West a distance of 57.76 feet to a point in the center of the South Branch of Cedar Creek;

THENCE in a Southerly direction with the meanders of the center of South Branch of Cedar Creek the following courses and distances:

THENCE South 81 deg. 36 min. 40 sec. West a distance of 70.95 feet to an angle point;

THENCE South 46 deg. 12 min. 00 sec. West a distance of 100.00 feet to an angle point;

THENCE South 20 deg. 53 min. 40 sec. West a distance of 207.50 feet to an angle point;

THENCE South 14 deg. 05 min. 10 sec. East a distance of 103.00 feet to an angle point;

THENCE South 21 deg. 37 min. 45 sec. West a distance of 174.20 feet to an angle point;

THENCE South 06 deg. 24 min. 00 sec. East a distance of 242.80 feet to an angle point;

THENCE South 27 deg. 04 min. 45 sec. West a distance of 237.54 feet to an angle point;

THENCE South 28 deg. 08 min. 40 sec. West a distance of 212.41 feet to an angle point;

THENCE South 45 deg. 44 min. 10 sec. West a distance of 96.76 feet to an angle point;

THENCE South 21 deg. 18 min. 00 sec. West a distance of 198.85 feet to an angle point;

THENCE South 42 deg. 49 min. 00 sec. West a distance of 160.27 feet to an angle point;

THENCE South 22 deg. 53 min. 20 sec. West a distance of 223.32 feet to an angle point;

THENCE South 07 deg. 42 min. 45 sec. East, a distance of 107.12 feet to an angle point;

THENCE South 18 deg. 28 min. 00 sec. East a distance of 231.65 feet to an angle point;

THENCE South 09 deg. 26 min. 40 sec. West a distance of 187.07 feet to an angle point;

THENCE South 02 deg. 48 min. 10 sec. West a distance of 100.77 feet to an angle point;

THENCE South 14 deg. 07 min. 20 sec. West a distance of 45.04 feet to an angle point;

THENCE South 49 deg. 42 min. 00 sec. West a distance of 241.09 feet to an angle point;

THENCE South 01 deg. 49 min. 20 sec. East a distance of 136.08 feet to an angle point;

THENCE South 38 deg. 48 min. 15 sec. West a distance of 105.41 feet to an angle point;

THENCE South 08 deg. 29 min. 15 sec. East a distance of 135.35 feet to an angle point;

THENCE South 14 deg. 58 min. 55 sec. East a distance of 52.40 feet to an angle point;

THENCE South 72 deg. 47 min. 20 sec. East a distance of 53.21 feet to an angle point;

THENCE South 20 deg. 30 min. 55 sec. East a distance of 39.81 feet to an angle point;

THENCE South 56 deg. 04 min. 45 sec. West a distance of 86.97 feet to an angle point;

THENCE South 03 deg. 47 min. 50 sec. East a distance of 113.55 feet to an angle point for corner;

THENCE South 81 deg. 40 min. 30 sec. West, leaving South Branch of Cedar Creek, a distance of 153.01 feet to a one half inch iron rod found for angle point;

THENCE North 88 deg. 50 min. 00 sec. West a distance of 161.47 feet to the PLACE OF BEGINNING;

CONTAINING 1,304,870 square feet or 29.9557 acres of land, more or less.

LESS AND EXCEPT the following described 8.4528 acre tract of land released from the Declaration by Document #201200274919, recorded on September 17, 2012 in the Official Public Records of Real Property of Dallas County, Texas.

Description of an 8.4528 acre tract of land situated in the John W. Wright Survey, Abstract No. 1622, City of Dallas, Dallas County, Texas and being a portion of Wynnewood Gardens No. 4, Eighth Section of Wynnewood, an addition to the City of Dallas, Texas according to the plat thereof recorded in Volume 12, Pages 78-A, B and C, Map Records, Dallas County, Texas; said 8.4528 acre tract also being a portion of Tract 1 conveyed to WCH Limited Partnership in Special Warranty Deed recorded in Volume 93237, Page 5104, Deed Records, Dallas County, Texas; said 11.6297 acre tract being more particularly described by metes and bounds as follows:

COMMENCING, at a 1/2-inch iron rod found at the intersection of the north right-of-way line of Wynnewood Drive (70 feet wide) and the easterly right-of-way line of Llewellyn Avenue (80 feet wide); said point also being the southwest corner of said Eighth Section of Wynnewood;

THENCE, North 17 degrees 43 minutes 07 seconds West, with said easterly right-of-way line of Llewellyn Avenue, a distance of 182.08 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 700.94 feet;

THENCE, northwesterly, with said curve to the right and transitioning from the easterly right-of-way line of Llewellyn Avenue to the east right-of-way line of Pratt Street (50 feet wide), through a central angle of 25 degrees 22 minutes 16 seconds, an arc distance of 310.38 feet (chord bears North 05 degrees 02 minutes 02 seconds West, 307.85 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve;

THENCE, with the said east right-of-way line of Pratt Street, the following metes and bounds;

North 07 degrees 39 minutes 06 seconds East, a distance of 15.10 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 1,884.86 feet;

Northeasterly, with said curve to the right, through a central angle of 06 degrees 54 minutes 47 seconds, an arc distance of 227.42 feet (chord bears North 11 degrees 06 minutes 29 seconds East, 227.28 feet) to a "+" cut in concrete set at the end of said curve;

North 14 degrees 33 minutes 56 seconds East, a distance of 3.30 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 3,249.04 feet;

Northeasterly, with said curve to the right, through a central angle of 11 degrees 45 minutes 24 seconds, an arc distance of 666.68 feet (chord bears North 20 degrees 26 minutes 35 seconds East, 665.51 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set (1/2-inch iron rod found South 68 degrees 34 minutes 11 seconds East, 1.14 feet) at the end of said curve;

North 26 degrees 19 minutes 20 seconds East, a distance of 27.24 feet to the POINT OF BEGINNING of said 8.4528 acre tract;

THENCE, with the said east right-of-way line of Pratt Street, the following metes and bounds:

North 26 degrees 19 minutes 20 seconds East, a distance of 251.28 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set (1/2-inch iron rod found South 76 degrees 21 minutes 51 seconds East, 1.00 feet) at the beginning of a curve to the right having a radius of 1,884.86 feet;

Northeasterly, with said curve to the right, through a central angle of 18 degrees 50 minutes 00 seconds, an arc distance of 619.56 feet (chord bears North 35 degrees 44 minutes 17 seconds East, 616.77 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve;

North 45 degrees 09 minutes 20 seconds East, a distance of 359.96 feet to a 1/2-inch iron rod found at the beginning of a curve to the right having a radius of 452.82 feet;

Northeasterly, with said curve to the right, through a central angle of 15 degrees 58 minutes 52 seconds, an arc distance of 126.30 feet (chord bears North 53 degrees 08 minutes 43 seconds East, 123.89 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve; said point also being the beginning of a curve to the right having a radius of 125.00 feet;

Southeasterly, with said curve to the right, through a central angle of 60 degrees 37 minutes 48 seconds, an arc distance of 132.27 feet (chord bears South 88 degrees 32 minutes 57 seconds East, 126.19 feet) to a 1/2-inch iron rod found at the end of said curve; said point also being the beginning of a curve to the right having a radius of 32.99 feet;

Southeasterly, with said curve to the right, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 51.82 feet (chord bears South 13 degrees 14 minutes 03 seconds East, 46.65 feet) to a 1/2-inch iron rod found at the end of said curve; said point also being on the west right-of-way line of Zang Boulevard (125 feet wide);

THENCE, with the said west right-of-way line of Zang Boulevard, the following metes and bounds:

South 31 degrees 46 minutes 00 seconds West, 752.12 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the left having a radius of 3,882.22;

Southwesterly, with said curve to the left, through a central angle of 08 degrees 11 minutes 03 seconds, an arc distance of 554.54 feet (chord bears South 27 degrees 40 minutes 29 seconds West, 554.06 feet) to a point for corner;

THENCE, North 63 degrees 40 minutes 40 seconds West, a distance of 333.68 feet to the POINT OF BEGINNING and CONTAINING 368,206 square feet or 8.4528 acres of land, more or less.

EXHIBIT "B"

**SECTION 4 - INCOME RESTRICTIONS/RENTAL RESTRICTIONS**

The Project Owner represents, warrants and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that:

(a) (1) \_\_\_\_\_ At least 20% or more of the Units in the Project [**are and**] will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income.

(2)   X   At least 40% or more of the Units in the Project [**are and**] will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income.

*(Check applicable percentage election)*

(b) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Project Owner at least annually on the basis of the current income of such Low-Income Tenant. If, upon any such annual certification, the Tenant of a Low-Income Unit who was, at the last annual income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the Project is rented to a person who is not a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Project are rented to persons who are not Low-Income Tenants. In no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code); no one of whom is entitled to file a joint income tax return; provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code.

(c) The Project will contain 296 Units, of which at least 296 Units will be Low-Income Units. The amount of Tax Credits allocated to the Project is based on the requirement that the Minimum Applicable Fraction for each building in the Project will be at least 100 percent or as specified, building-by-building, at Appendix A hereto. During the Term of this Declaration, Units at the Project shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants, such that each building in the Project shall at all times satisfy the Minimum Applicable Fraction for such building. The Project Owner's failure to ensure that each building in the Project complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the Service of Tax Credits, as well as other enforcement action.

(d) The Project and the Project Owner are subject to additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.



(e) The Project Owner will not refuse to lease a Unit at the Project to a prospective Tenant who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective Tenant as the holder of such voucher or certificate.

(f) During the Compliance Period and the Extended Use Period, the Project Owner, notwithstanding anything herein to the contrary, shall not (1) evict or terminate the tenancy of a Tenant of any Low-Income Unit other than for good cause nor (2) increase the gross rent with respect to a Low-Income Unit not otherwise permitted by Section 42 of the Code.

**EXHIBIT "C"**

**APPENDIX A - ADDITIONAL USE RESTRICTIONS**

*(Check all items which apply.)*

**Additional Occupancy Restrictions**

At least 30 Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income.

**Longer Compliance Period and Extended Use Period**

The Compliance Period shall be a period of 20 consecutive taxable years and the Extended Use Period shall be a period of 35 consecutive taxable years, each commencing with the first year of the Credit Period.

**Supportive Services**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Education and after school program for children to be provided by the University of North Texas, or other comparable organization, if these services cannot be provided by The University of North Texas.

**Community Based Board**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall be governed by a community based board, the majority of whose members live in the Project's community.

**Housing for Agricultural Workers**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide housing for agricultural workers.

**Transitional Housing for the Homeless**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide transitional housing for homeless persons, on a non-transient basis, with supportive services designed to assist Tenants in locating and retaining permanent housing.

**Public Housing Waiting Lists**

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project Owner shall consider prospective Tenants referred to from the waiting list of the Housing Authority of Dallas.

**Material Participation by Qualified Nonprofit Organization**

Throughout the Compliance Period, a "qualified nonprofit organization" within the meaning of Section 42(h)(5)(C) of the Code shall own an interest in the Project and shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Project.

**Right of First Refusal to Tenant or Qualified Nonprofit Organizations**

If at any time after January 1, 2014, the Project Owner shall determine to sell the Project, the Project Owner shall, prior to any such sale, notify the Department of its intent so to sell the Project. If, within the 90-day period following receipt of such notice, the Department shall identify one or more qualified nonprofit organizations, within the meaning of Section 42 (h) (5) (C) of the Code, or tenant organizations, any of which shall make a *bona fide* offer to purchase the Project for a purchase price equal to the sum of (i) the principal amount of outstanding indebtedness secured by the Project (other than indebtedness incurred within the 5-year period immediately preceding the date of said notice), and (ii) all Federal, State, and local taxes incurred or payable by the Project Owner as a consequence of such sale, the Project Owner shall sell the Project pursuant to such offer. If the Project shall, in accordance with the Declaration, have a Minimum Applicable Fraction of less than 1, the *bona fide* offer from a tenant or qualified nonprofit organization to purchase the Project shall be no less than the sum of (I) the purchase price calculated in accordance with the preceding sentence multiplied by the minimum applicable fraction and (II) the fair market value of the non-Low-Income Units. If the Department or the Project Owner shall receive *bona fide* offers to purchase the Project from more than one tenant or qualified nonprofit organization, the Project Owner shall sell the Project to the tenant or qualified nonprofit organization selected by the Department on such basis as it shall determine appropriate. The Department shall have the right to adopt procedures for (i) identifying tenant or qualified nonprofit organizations willing to purchase the Project, (ii) evaluating *bona fide* offers to purchase the Project, and (iii) determining the purchase price of the Project pursuant to the provisions of this paragraph. The tenant or nonprofit organization's exercise of the right of first refusal shall not terminate the Extended Use Period under the terms of this Declaration.

**Senior Projects**

Throughout the Compliance Period, unless otherwise permitted by the Department  at least 80% of the Units must be restricted to households in which at least one family member is 55 years of age or older OR  100% of the Units must be restricted to households in which all household members are 62 years of age or older.<sup>1</sup>

<sup>1</sup> <sup>1</sup>Note: The Federal Fair Housing Act requires, generally, that projects which are limited to occupancy by older persons either (i) be restricted to households in which all members are 62 years or older or (ii) provide significant facilities and services for the elderly or meet certain other requirements and be limited to households in which at

**Minimum Applicable Fraction by Building**

<b>Building Identification Number (BIN)</b>	<b>Minimum Applicable Fraction</b>
TX-93-00134	100%
TX-93-00135	100%
TX-93-00136	100%
TX-93-00137	100%
TX-93-00138	100%
TX-93-00139	100%
TX-93-00140	100%
TX-93-00141	100%
TX-93-00142	100%
TX-93-00143	100%
TX-93-00144	100%
TX-93-00145	100%
TX-93-00146	100%
TX-93-00147	100%
TX-93-00148	100%
TX-93-00149	100%
TX-93-00150	100%
TX-93-00151	100%
TX-93-00152	100%
TX-93-00153	100%
TX-93-00154	100%
TX-93-00155	100%
TX-93-00156	100%
TX-93-00157	100%
TX-93-00158	100%
TX-93-00159	100%
TX-93-00160	100%
TX-93-00161	100%
TX-93-00162	100%
TX-93-00163	100%
TX-93-00164	100%
TX-93-00165	100%
TX-93-00166	100%
TX-93-00167	100%

least one member is 55 years or older. See 24 D.F.R. §§100.300-100.304 for exact requirements. All tax credit projects must comply with these requirements, as applicable under Federal law, in addition to the Declaration

TX-93-00168	100%
TX-93-00169	100%
TX-93-00170	100%
TX-93-00171	100%
TX-93-00172	100%
TX-93-00173	100%
TX-93-00174	100%
TX-93-00175	100%
TX-93-00194	100%
TX-93-00196	100%
TX-93-00197	100%
TX-93-00198	100%
TX-93-00199	100%
TX-93-00200	100%
TX-93-00201	100%
TX-93-00202	100%
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TX-93-00206	100%
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TX-93-00208	100%
TX-93-00209	100%
TX-93-00210	100%
TX-93-00211	100%
TX-93-00212	100%
TX-93-00213	100%
TX-93-00214	100%
TX-93-00215	100%
TX-93-00216	100%
TX-93-00217	100%

**PREPARED BY:**

Texas Department of Housing  
and Community Affairs  
Legal Services Division  
P.O. Box 13941  
Austin, Texas 78711-3941  
(512) 305-9005

**AFTER RECORDING RETURN TO:**

Texas Department of Housing  
and Community Affairs  
Asset Management Division  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attn: Raquel Morales

Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County TEXAS  
07/03/2013 04:21:49 PM  
\$92.00



A handwritten signature in black ink, appearing to be "JFW", is written over the seal.

201300210550

**EXHIBIT C**

**PARTIAL RELEASE FROM DECLARATION OF LAND USE RESTRICTIVE  
COVENANTS FOR LOW-INCOME HOUSING CREDITS**

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**Wynnewood Seniors Housing (Phase 1)**

**[See attached]**

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PARTIAL RELEASE FROM DECLARATION OF LAND USE RESTRICTIVE  
COVENANTS FOR LOW-INCOME HOUSING CREDITS  
(this "Partial Release")

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.

THE STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS           §

This **PARTIAL RELEASE** is effective as of the date executed by the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the "**Department**"). The Department hereby executes this Partial Release for the purpose of releasing the real property located in Dallas County, Texas, more particularly described in **Exhibit "B"** attached hereto and incorporated herein (the "**Property**"), from that certain Declaration of Land Use Restrictive Covenants For Low-Income Housing Credits dated as of December 21, 1995, executed by and between **WCH LIMITED PARTNERSHIP**, a Texas limited partnership, ("**Original Project Owner**"), and the Department, filed and recorded on December 28, 1995 in Volume 95250, Page 01506 of the Official Public Records of Dallas County, Texas (the "**Declaration**") (the "**Records**"), filed upon and against the real property more particularly described in **Exhibit "A"** attached hereto and made a part hereof.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Department, the Department hereby **RELEASES** and **DISCHARGES** only the Property from any and all covenants, reservations and restrictions imposed by the Declaration.

All fees and charges incurred in connection with this Partial Release, including but not limited to fees for recordation in the county records, shall be the responsibility of the Original Project Owner.


When the context requires, singular nouns and pronouns include the plural.

By executing this Partial Release, the Department makes no representation or warranty as to its efficacy or enforceability with respect to any party other than the Department.



DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, a public and official  
agency of the State of Texas

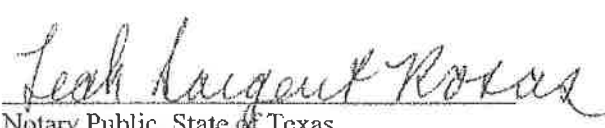
By:   
Name: Timothy K. Irvine  
Its duly authorized officer or representative

THE STATE OF TEXAS §  
§  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 12<sup>th</sup> day of  
September, 2012, by Timothy K. Irvine, duly authorized representative of the TEXAS  
DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency  
of the State of Texas, on behalf of said agency.

(Seal)



  
Notary Public, State of Texas

PREPARED BY:  
Texas Department of Housing  
and Community Affairs  
Legal Services Division  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701  
(512) 305-9005

AFTER RECORDING RETURN TO:  
Texas Department of Housing  
and Community Affairs  
Compliance and Oversight Division  
P.O. Box 13941  
Austin, Texas 78711-3941  
Attn: Amy Hammond

EXHIBIT "A"

**LEGAL DESCRIPTION OF THE PROPERTY**

(See attached five (5) pages metes and bounds legal description attached hereto and made a part hereof for all purposes.)

EXHIBIT "A"

TRACT I:

Description of an 18.4520 acre tract of land, said tract being known as Wynnewood Gardens #4 and being that property designated as the Eighth Section of Wynnewood, an addition to the City of Dallas, Dallas County, Texas, as recorded in Volume 12, Pages 78-A, B and C of the Map Records of Dallas County, Texas, said tract being in Block 5873 of the City of Dallas, said 18.4520 acre tract being that same property shown as Part 1, Part 2 and Part 3 on survey plats prepared by Powell & Powell Engineers in May 1949, and bearing Drawing Numbers P-115.48, P-115.49 and P-115.50, respectively, said 18.4520 acre tract being more particularly described as follows:

BEGINNING at a one half inch iron rod set for corner at the intersection of the North right-of-way line of Wynnewood Drive (70 feet wide) and the Easterly right-of-way line of Llewellyn Avenue (80 feet wide) said point being the Southwest corner of said Eighth Section of Wynnewood;

THENCE North 17 deg. 43 min. 07 sec. West, with said line of Llewellyn Avenue, a distance of 182.08 feet to a 5/8 inch iron rod found at the beginning of a curve to the right, the center of which bears North 72 deg. 16 min. 53 sec. East, a distance of 700.94 feet from said point;

THENCE with said curve to the right, transitioning from the East line of Llewellyn Avenue to the East right-of-way line of Pratt Street (50 feet wide) through a central angle of 25 deg. 22 min. 16 sec., an arc distance of 310.38 feet to a one half inch iron rod set at the end of said curve;

THENCE North 07 deg. 39 min. 09 sec. East, with the East line of Pratt Street, a distance of 15.10 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 82 deg. 20 min. 51 sec. a distance of 1884.86 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right through a central angle of 06 deg. 54 min. 47 sec., an arc distance of 227.42 feet to a Hilti Nail set at the end of said curve;

THENCE North 14 deg. 33 min. 56 sec. East, with said line of Pratt Street, a distance of 3.30 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 75 deg. 26 min. 04 sec. East a distance of 3249.04 feet from said point;

THENCE with said line of said Pratt Street and with said curve to the right, at an arc distance of 71.01 feet a railroad spike set for line, in all, through a central angle of 11 deg. 45 min. 24 sec. an arc distance of 666.68 feet to a one half inch iron rod set at the end of said curve;

THENCE North 26 deg. 19 min. 20 sec. East, with said line of Pratt Street, a distance of 251.28 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 63 deg. 40 min. 40 sec. East a distance of 1884.86 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right, at an arc distance of 210.43 feet a one half inch iron rod set for line, in all, through a central angle of 18 deg. 50 min. 00 sec. an arc distance of 619.56 feet to a one half inch iron rod set at the end of said curve;

THENCE North 45 deg. 09 min. 20 sec. East with said line of Pratt Street, a distance of 359.96 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears South 44 deg. 50 min. 40 sec. East a distance of 452.82 feet from said point;

THENCE with said line of Pratt Street, and with said curve to the right through a central angle of 15 deg. 58 min. 52 sec., an arc distance of 126.30 feet to a one half inch iron rod set at the end of said curve and at the beginning of a curve to the right the center of which bears South 28 deg. 51 min. 48 sec. East a distance of 125.00 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right, through a central angle of 60 deg. 37 min. 48 sec. an arc distance of 132.27 feet to a Hilti Nail set at the end of said curve and at the beginning of a curve to the right the center of which bears South 31 deg. 46 min. 00 sec. West a distance of 32.99 feet from said point;

THENCE with said line of Pratt Street and with said curve to the right through a central angle of 90 deg. 00 min. 00 sec., an arc distance of 51.82 feet to a one half inch iron rod set at the end of said curve in the West right-of-way line of Zang Boulevard (125 feet wide);

THENCE South 31 deg. 46 min. 00 sec. West with said line of Zang Boulevard, a distance of 752.12 feet to a one half inch iron rod set at the beginning of a curve to the left the center of which bears South 58 deg. 14 min. 00 sec. East a distance of 3882.22 feet from said point;

THENCE with said line of Zang Boulevard and with said curve to the left, at an arc distance of 120.29 feet, a one half inch iron rod set for line, at an arc distance of 1106.80 feet, a one half inch iron rod set for line, in all, through a central angle of 26 deg. 34 min. 32 sec., an arc distance of 1800.69 feet, to a one half inch iron rod set for corner in the North line of Wynnewood Drive;

THENCE South 84 deg. 24 min. 15 sec. West with the North line of Wynnewood Drive a distance of 200.55 feet to the PLACE OF BEGINNING;

CONTAINING 803,768 square feet or 18.4520 acres of land, more or less.

TRACT II:

Description of 29.9557 acre tract of land, said tract being known as Wynnewood Gardens No. 5 and being that property designated as the Ninth Section of Wynnewood, an addition to the City of Dallas, Dallas County, Texas, as recorded in Volume 12, Page 214-A of the Map Records of Dallas County, Texas, said tract being in Block 5973 of the City of Dallas, said 29.9557 acre tract being that same property shown as Part 1, Part 2, Part 3 and Part 4 on survey plats prepared by Powell & Powell Engineers in June 1949 and being Drawing Numbers P-115.51, P-115.52 and P-115.53, respectively, said 29.9557 acre tract being more particularly described as follows:

BEGINNING at a one half inch iron rod found for corner in the East right-of-way line of Zang Boulevard (125 feet wide) said point being North 00 deg. 03 min. 00 sec. West a distance of 576.51 feet from the intersection of said line of Zang Boulevard with the North right-of-way line of Illinois Avenue (100 feet wide);

THENCE North 00 deg. 03 min. 00 sec. West with said line of Zang Boulevard, at 302.82 feet pass a one half inch iron rod set for line, in all, a distance of 378.34 feet to a one half inch iron rod set at the beginning of a curve to the right the center of which bears North 89 deg. 57 min. 00 sec. East, a distance of 3757.22 feet;

THENCE with said line of Zang Boulevard and with said curve to the right, at an arc distance of 993.93 feet pass a one half inch iron rod set for line, in all, through a central angle of 31 deg. 49 min. 00 sec. an arc distance of 2088.41 feet to a one half inch iron rod set at the end of said curve;

THENCE North 31 deg. 46 min. 00 sec. East, at 23.72 feet pass a one half inch iron rod set for line, in all a distance of 1242.95 feet to a one half inch iron rod set at angle point;

THENCE North 38 deg. 44 min. 57 sec. East, with said line of Zang Boulevard a distance of 121.49 feet to a one half inch iron rod set for corner;

THENCE South 75 deg. 23 min. 30 sec. East a distance of 31.00 feet to a one half inch iron rod set for corner in the West line of a tract owned by the City of Dallas, said tract being the old Dallas Southern Traction Company right-of-way, said point being in a curve to the left the center of which bears South 75 deg. 23 min. 30 sec. East a distance of 1474.69 feet from said point;

THENCE with said curve to the left through a central angle of 13 deg. 00 min. 00 sec. an arc distance of 334.59 feet to a one half inch iron rod set at the end of said curve;

THENCE South 01 deg. 36 min. 40 sec. West a distance of 57.76 feet to a point in the center of the South Branch of Cedar Creek;

THENCE in a Southerly direction with the meanders of the center of South Branch of Cedar Creek the following courses and distances:

THENCE South 81 deg. 36 min. 40 sec. West a distance of 70.95 feet to an angle point;

THENCE South 46 deg. 12 min. 00 sec. West a distance of 100.00 feet to an angle point;

THENCE South 20 deg. 53 min. 40 sec. West a distance of 207.50 feet to an angle point;

THENCE South 14 deg. 05 min. 10 sec. East a distance of 103.00 feet to an angle point;

THENCE South 21 deg. 37 min. 45 sec. West a distance of 174.20 feet to an angle point;

THENCE South 06 deg. 24 min. 00 sec. East a distance of 242.80 feet to an angle point;

THENCE South 27 deg. 04 min. 45 sec. West a distance of 237.54 feet to an angle point;

THENCE South 28 deg. 09 min. 40 sec. West a distance of 212.41 feet to an angle point;

THENCE South 45 deg. 44 min. 10 sec. West a distance of 96.76 feet to an angle point;

THENCE South 21 deg. 16 min. 00 sec. West a distance of 198.85 feet to an angle point;

THENCE South 42 deg. 49 min. 00 sec. West a distance of 160.27 feet to an angle point;

THENCE South 22 deg. 53 min. 20 sec. West a distance of 223.32 feet to an angle point;

THENCE South 07 deg. 42 min. 45 sec. East, a distance of 107.12 feet to an angle point;

THENCE South 18 deg. 28 min. 00 sec. East a distance of 231.65 feet to an angle point;

THENCE South 09 deg. 26 min. 40 sec. West a distance of 187.07 feet to an angle point;

THENCE South 02 deg. 48 min. 10 sec. West a distance of 100.77 feet to an angle point;

THENCE South 14 deg. 07 min. 20 sec. West a distance of 45.04 feet to an angle point;

THENCE South 49 deg. 42 min. 00 sec. West a distance of 241.09 feet to an angle point;

THENCE South 01 deg. 49 min. 20 sec. East a distance of 136.08 feet to an angle point;

THENCE South 38 deg. 48 min. 15 sec. West a distance of 105.41 feet to an angle point;

THENCE South 08 deg. 29 min. 15 sec. East a distance of 135.35 feet to an angle point;

THENCE South 14 deg. 58 min. 55 sec. East a distance of 52.40 feet to an angle point;

THENCE South 72 deg. 47 min. 20 sec. East a distance of 53.21 feet to an angle point;

THENCE South 20 deg. 30 min. 55 sec. East a distance of 39.81 feet to an angle point;

THENCE South 56 deg. 04 min. 45 sec. West a distance of 86.07 feet to an angle point;

THENCE South 03 deg. 47 min. 50 sec. East a distance of 113.55 feet to an angle point for corner;

THENCE South 81 deg. 40 min. 30 sec. West, leaving South Branch of Cedar Creek, a distance of 153.01 feet to a one half inch iron rod found for angle point;

THENCE North 88 deg. 50 min. 00 sec. West a distance of 161.47 feet to the PLACE OF BEGINNING;

CONTAINING 1,304,870 square feet or 29.9557 acres of land, more or less.

**EXHIBIT "B"**

**8.4528 ACRES TO BE RELEASED FROM DECLARATION**

(See two (2) page metes and bounds legal description attached hereto and made a part hereof for all purposes.)



EXHIBIT "B"

**8.4528 ACRES TO BE RELEASED FROM DECLARATION**

Description of an 8.4528 acre tract of land situated in the John W. Wright Survey, Abstract No. 1622, City of Dallas, Dallas County, Texas and being a portion of Wynnewood Gardens No. 4, Eighth Section of Wynnewood, an addition to the City of Dallas, Texas according to the plat thereof recorded in Volume 12 Pages 78-A, B and C, Map Records, Dallas County, Texas; said 8.4528 acre tract also being a portion of Tract 1 conveyed to WCH Limited Partnership in Special Warranty Deed recorded in Volume 93237, Page 5104, Deed Records, Dallas County, Texas; said 11.6297 acre tract being more particularly described by metes and bounds as follows:

COMMENCING, at a 1/2-inch iron rod found at the intersection of the north right-of-way line of Wynnewood Drive (70 feet wide) and the easterly right-of-way line of Llewellyn Avenue (80 feet wide); said point also being the southwest corner of said Eighth Section of Wynnewood;

THENCE, North 17 degrees 43 minutes 07 seconds West, with said easterly right-of-way line of Llewellyn Avenue, a distance of 182.08 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 700.94 feet;

THENCE, northwesterly, with said curve to the right and transitioning from the easterly right-of-way line of Llewellyn Avenue to the east right-of-way line of Pratt Street (50 feet wide), through a central angle of 25 degrees 22 minutes 16 seconds, an arc distance of 310.38 feet (chord bears North 05 degrees 02 minutes 02 seconds West, 307.85 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve;

THENCE, with the said east right-of-way line of Pratt Street, the following metes and bounds:

North 07 degrees 39 minutes 06 seconds East, a distance of 15.10 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 1,884.86 feet;

Northeasterly, with said curve to the right, through a central angle of 06 degrees 54 minutes 47 seconds, an arc distance of 227.42 feet (chord bears North 11 degrees 06 minutes 29 seconds East, 227.28 feet) to a "+" cut in concrete set at the end of said curve;

North 14 degrees 33 minutes 56 seconds East, a distance of 3.30 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 3,249.04 feet;

Northeasterly, with said curve to the right, through a central angle of 11 degrees 43 minutes 24 seconds, an arc distance of 666.68 feet (chord bears North 20 degrees 26 minutes 35 seconds East, 665.51 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set (1/2-inch iron rod found South 68 degrees 34 minutes 11 seconds East, 1.14 feet) at the end of said curve;

North 26 degrees 19 minutes 20 seconds East, a distance of 27.24 feet to the POINT OF BEGINNING of said 8.4528 acre tract;

EXHIBIT "B" - CONTINUED

THENCE, with the said east right-of-way line of Pratt Street, the following metes and bounds:

North 26 degrees 19 minutes 20 seconds East, a distance of 251.28 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set (1/2-inch iron rod found South 76 degrees 21 minutes 51 seconds East, 1.00 feet) at the beginning of a curve to the right having a radius of 1,884.86 feet;

Northeasterly, with said curve to the right, through a central angle of 18 degrees 50 minutes 00 seconds, an arc distance of 619.56 feet (chord bears North 35 degrees 44 minutes 17 seconds East, 616.77 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve;

North 45 degrees 09 minutes 20 seconds East, a distance of 359.96 feet to a 1/2-inch iron rod found at the beginning of a curve to the right having a radius of 452.82 feet;

Northeasterly, with said curve to the right, through a central angle of 15 degrees 58 minutes 52 seconds, an arc distance of 126.30 feet (chord bears North 53 degrees 08 minutes 43 seconds East, 125.89 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve: said point also being the beginning of a curve to the right having a radius of 125.00 feet;

Southeasterly, with said curve to the right, through a central angle of 60 degrees 37 minutes 48 seconds, an arc distance of 132.27 feet (chord bears South 88 degrees 32 minutes 57 seconds East, 126.19 feet) to a 1/2-inch iron rod found at the end of said curve; said point also being the beginning of a curve to the right having a radius of 32.99 feet;

Southeasterly, with said curve to the right, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 51.82 feet (chord bears South 13 degrees 14 minutes 03 seconds East, 46.65 feet) to a 1/2-inch iron rod found at the end of said curve; said point also being on the west right-of-way line of Zang Boulevard (125 feet wide);

THENCE, with the said west right-of-way line of Zang Boulevard, the following metes and bounds:

South 31 degrees 46 minutes 00 seconds West, 752.12 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the left having a radius of 3,882.22;

Southwesterly, with said curve to the left, through a central angle of 08 degrees 11 minutes 03 seconds, an arc distance of 554.54 feet (chord bears South 27 degrees 40 minutes 29 seconds West, 554.06 feet) to a point for corner;

THENCE, North 63 degrees 40 minutes 40 seconds West, a distance of 333.68 feet to the POINT OF BEGINNING and CONTAINING 368,206 square feet or 8.4528 acres of land, more or less.

**Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
09/17/2012 11:33:28 AM  
\$56.00  
201200274919**



**EXHIBIT D**

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
LAND USE RESTRICTIVE AGREEMENT FOR LOW INCOME HOUSING CREDITS**

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**Wynnewood Seniors Housing (Phase 1)**

**[See attached]**

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
LAND USE RESTRICTION AGREEMENT FOR LOW INCOME HOUSING TAX CREDITS**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS/LAND USE RESTRICTION AGREEMENT FOR LOW-INCOME HOUSING TAX CREDITS (this "Declaration"), dated as of **SEPTEMBER 5, 2012**, is made by and between **WYNNEWOOD SENIORS HOUSING, LP** (together with its successors and assigns, the "Development Owner") and The Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas. (Together with any successor to its rights, duties and obligations, the "Department"), and is given by Development Owner as an inducement to the Department to allocate tax credits as a condition precedent to the determination that the Development, as defined herein, satisfies the requirements of the State of Texas's Qualified Allocation Plan and the allocation of low-income housing tax credits (the "Tax Credits"), pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, and regulations promulgated pursuant thereto (the "Code"), by the Department. This Declaration incorporates the extended low-income housing commitment required by Section 42(h)(6) of the Code and is promulgated in accordance with the provisions of Chapter 2306, Tex. Gov. Code, (the "Act"), as may be amended from time to time.

**WITNESSETH:**

WHEREAS, the Development Owner is or shall be the Development Owner of a low income rental housing development, known as or to be known as **WYNNEWOOD SENIORS HOUSING** (the "Development Improvements"), on real property located in the City of **DALLAS**, County of **DALLAS**, State of Texas, more particularly described in Exhibit A hereto (the "Development Land") (the Development Improvements and the Development Land being collectively referred to herein as the "Development");

WHEREAS, the Department has been designated by the Governor of the State of Texas as the housing credit agency for the State of Texas for the allocation of Tax Credits;

WHEREAS, the Development Owner has represented to the Department in the Development Owner's Low-Income Housing Tax Credit Application (the "Application"), authorized by the Department's Low-Income Rental Housing Tax Credit Rules (the "Department Rules"), that the Development Owner shall lease **100%** of the units in the Development to individuals or families whose income is **60%** or less of the area median gross income (including adjustments for family size), as more specifically provided herein, such Application being incorporated herein by reference for all purposes;

WHEREAS, the Development Owner has represented to the Department in the Application that it will impose additional rent, occupancy, and ownership restrictions as shown in Appendix A of this document.

WHEREAS, the Development Owner is subject to the regulatory and oversight powers of the Department and other terms and conditions of Chapter 2306, Tex. Gov. Code;

WHEREAS, the Code requires, as a condition precedent to the allocation of Tax Credits, that the Development Owner execute, deliver and record in the real property records of the county in which the Development is located this Declaration in order to create certain covenants running with the land for the purpose of enforcing the requirements of Section 42 of the Code by regulating and restricting the use, occupancy and transfer of the Development as set forth herein; and

WHEREAS, the Development Owner, under this Declaration, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use, occupancy and transfer of the Development shall be and are covenants running with the Development Land for the Term stated herein, are binding upon all subsequent owners and operators of the Development during such Term, and are not merely personal covenants of the Development Owner.

NOW, THEREFORE, in consideration of the premises set forth above, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Development Owner and the Department agree as follows:

## SECTION 1 - DEFINITIONS

(a) Unless the context otherwise requires, and in addition to those terms defined in the recitals set forth above, capitalized terms used in this Declaration shall have the following meanings:

**Act**--Means the Texas Government Code, Chapter 2306, as amended or any corresponding provision or provisions of succeeding law as it or they may be amended from time to time.

**Area Median Gross Income (AMGI)**--Area median gross household income, as determined for all purposes under and in accordance with the requirements of §42 of the Code.

**Assumption Agreement**--An agreement regarding the transfer of the property that meets the requirements of Section 3(i) hereof.

**Board**--Means the governing board of the Department.

**Compliance Period**--Means with respect to any building, the period of 15 taxable years beginning with the 1<sup>st</sup> taxable year of the credit period.

**Credit Period**--Means with respect to any building, the period of 10 taxable years beginning with the taxable year in which the building is placed in service, or at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the 1<sup>st</sup> year of such period.

**Department Compliance Monitoring Procedures**--Means those procedures and requirements adopted or imposed by the Department, and modified by the Department from time to time, for the purpose of discharging its responsibilities pursuant to Section 42(m)(1)(B)(iii) of the Code to monitor compliance by the Development Owner and the Development with the provisions of Section 42 of the Code and to notify the Service of instances of noncompliance.

**Department Rules**--Refers to the Texas Administrative Code, Title 10, Part 1

**Extended Use Period**--Means the period beginning on the first day in the compliance period on which such building is part of a qualified low-income housing project and ending on the later of the date specified by such agency in such agreement, or the date which is 15 years after the close of the compliance period.

**Gross Rent**--Means all amounts paid by a Tenant for rent, determined in a manner consistent with Section 42(g)(2) of the Code. Gross Rent shall include any utility allowance prescribed by the Secretary.

**Income**--Means the income of a Tenant determined in a manner consistent with the requirements of Section 42(g)(1) of the Code.

**Low-Income**--Means, with respect to any Tenant, an income level not exceeding 50% or 60% of Area Median Gross Income, adjusted for family size, as provided in Section 4 hereof, unless an alternative income level shall be set forth at Appendix A hereto.

**Low-Income Tenant**--Means a Tenant who, when the Tenant originally occupied the Unit, had an Income qualifying as Low-Income. For so long as the Tenant occupies the particular Unit, the Tenant will remain a Low-Income Tenant if the Tenant's Income, upon the most recent income certification, does not exceed 140% of the applicable Low-Income level.

**Low Income Unit**--A Unit that is intended to be restricted for occupancy by an income eligible household, as defined by the Department.

**Minimum Applicable Fraction**--Means the percentage with respect to a building in the Development, calculated as the lesser of the percentage of Units in such building which are Low-Income Units or the percentage of floor space of all Units in such building which is in Low-Income Units, all calculated as required pursuant to Section 42(c)(1)(b) of the Code, which serves as the basis for the Department's allocation of Tax Credits to the building as provided in Section 4(c) hereof.

**Principal**--The term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, Special Limited Partners and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a 10% or more interest in the corporation and any individual Controlling such stock holder; and

(C) Limited liability companies, Principals include all managing members, members having a 10% or more interest in the limited liability company, any individual controlling such members, or any officer authorized to act on behalf of the limited liability company.

**Rent-Restricted**--Means, with respect to any Unit, that the Gross Rent with respect to such Unit is not more than 30% of the imputed income limitation applicable to such Unit pursuant to Section 42(g)(2)(C) of the Code.

**Secretary**--Means the Secretary of the Treasury of the United States.

**Service**--Means the United States Internal Revenue Service and any successor thereto.

**State**--Means the State of Texas.

**Tenant**--Means the individual or individuals entitled to occupy a Unit in the Development by lease or other legal relationship with the Development Owner.

**Term**--Means the length of time this declaration shall remain in effect as set out in Section 5 hereof.

**Unit**--Means any residential rental unit in a development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(b) Any term or phrase which is used in this Declaration and not defined herein shall have the meaning, if any, assigned thereto in Section 42 of the Code, and if no meaning is assigned thereto in Section 42 of the Code, the meaning, if any, assigned in the Department Rules. Any term or phrase which is defined herein shall, unless the context shall clearly indicate otherwise, be interpreted in a manner consistent with the provisions and requirements of Section 42 of the Code.

## SECTION 2 – RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

(a) The Development Owner shall, at its own cost, cause this Declaration and all amendments hereto to be recorded and filed in the official real property records of the county in which the Development is located. Upon recording, the Development Owner shall immediately transmit to the Department an executed original of the recorded Declaration stamped by the county to show the date, volume and page numbers of record. The Development Owner agrees that the Department will not issue the Internal Revenue Service Form 8609, evidencing final allocation of the Tax Credits, unless and until the Department has received the recorded, executed original of the Declaration.

(b) The Development Owner intends, declares and covenants, on behalf of itself and all future owners and operators of the Development during the Term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Development (i) shall be and are covenants running with the Development Land, encumbering the Development Land for the Term of this Declaration and binding upon the Development Owner's successors in title and all subsequent owners and operators of the Development Land, and (ii) shall bind the Development Owner (and the benefits shall inure to the Department and any past, present or prospective Tenant of the Development) and its respective successors and assigns during the Term of this Declaration. The Development Owner hereby agrees that any and all requirements of the laws of the State of Texas to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Development Land. For the Term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Development or portion thereof shall expressly provide that such conveyance is subject to this Declaration; provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Development or portion thereof provides that such conveyance is subject to this Declaration.

(c) The Development Owner shall obtain the written consent of any existing Leinholder of record (each an "Existing Leinholder") on the Development to this Declaration and the requirements hereof, including specifically the requirements of Section 5(b)(1) and Section 5(c) with respect to provisions which survive or may be revived after foreclosure, and such consent shall be in a form promulgated by

the Department from time to time and shall be a condition precedent to the issuance by the Department of Internal Revenue Service Form 8609, evidencing final allocation of the Tax Credits. The Development Owner represents and warrants to the Department that attached hereto as Addendum A and made a part hereof is an executed and acknowledged Leinholder's Consent from each Existing Leinholder, if any, as of the effective date hereof.

### SECTION 3 – REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE DEVELOPMENT OWNER

The Development Owner hereby represents covenants and warrants as follows:

(a) The Development Owner (i) is a **LIMITED PARTNERSHIP**, duly organized and validly existing under the laws of the State of TEXAS, and is duly authorized and qualified to transact in the State any and all business contemplated by this Declaration and the Department Rules; (ii) possesses all requisite power, authority, licenses and permits to own its properties and assets and to conduct its business; and (iii) has all legal right, power and authority to execute and deliver this Declaration.

(b) The execution and performance of this Declaration by the Development Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulation, or any order of any court or other department of the State or governmental body; (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement, mortgage, mortgage note or other instrument to which the Development Owner is a party or by which it or the Development is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

(c) The Development Owner has, at the time of execution and delivery of this Declaration, good and indefeasible fee simple title to or a leasehold interest extending at least ten years beyond the end of the Extended Use Period in the premises constituting the Development, free and clear of any lien or encumbrance, except those created by any loan documents relating to the Development, those which are created pursuant to this Declaration and those which are otherwise permitted encumbrances, as specifically set forth at Exhibit B herelo.

(d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Development Owner threatened, against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.

(e) The Development constitutes or will constitute, and the Development Owner covenants, that commencing with the last day of the first year of the Credit Period and continuing throughout the Term of this Declaration, it shall maintain the Development as, a "qualified low-income housing Development", as defined in Section 42(g) of the Code.

(f) Each Unit in the Development contains separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation (unless the Development qualifies as a single-room occupancy Development) which is to be used on other than a transient basis as provided in Section 42(i)(3) of the Code.

(g) The Development Owner will comply fully and at all times with the Department Rules.

(h) During the Term of this Declaration, the Development Owner covenants, agrees and warrants that each Low-Income Unit is and will remain suitable for occupancy in accordance with regulations prescribed by the Secretary, taking into account local health, safety, and building codes.

(i) The Development Owner covenants that it will not without prior written approval from the Department sell, transfer or exchange any portion of any building in the Development unless it sells, transfers or exchanges the entire building to the same person. Subject to the requirements of Section 42 of the Code and this Declaration, the Development Owner may sell, transfer or exchange the entire Development or any building in the Development at any time, provided that the Development Owner shall require, as a condition precedent to any such sale, transfer or exchange, that the successor owner and operator assume, in writing, in an Assumption Agreement acceptable to the Department, the Development Owner's obligations hereunder and under Section 42 of the Code, which Assumption Agreement shall be delivered to the Department in executed, recordable form prior to any such sale, transfer or exchange. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Development or any building in the Development. The Development Owner agrees that the Department may void any sale, transfer or exchange of the Development if the successor owner and operator fails to execute and deliver an Assumption Agreement or if the Development Owner or the successor owner and operator otherwise acts in contravention of this Section 3(i). This Declaration and the covenants contained herein shall survive and be effective regardless of whether any such successor owner and operator or intended successor owner and operator shall have assumed them pursuant to an executed Assumption Agreement.

(j) The Development Owner agrees to notify the Department in writing prior to any sale, transfer or exchange of the entire Development or any building therein, and to provide to the Department the name(s) and address(es) and financial reports, as applicable, of the prospective successor owner and operator of the Development or building, so the Department can determine the economic viability of such prospective successor and such Development or building and whether such prospective successor is acceptable as Development Owner under the Department Rules. The Development Owner further agrees to notify the Department in writing prior to any change in the identity of a General Partner or other Principal of the Development Owner, and to provide to the Department the name(s), address(es), and financial reports, as applicable, of any successor or additional General Partner or Principal, so the Department can determine whether such party is acceptable in such role with the Development Owner under the Department Rules.

(k) The Development Owner shall not demolish any part of the Development or substantially subtract from any real or personal property of the Development or permit the use of any Unit for any purpose other than rental housing during the Term of this Declaration, unless required by law.

(l) The Development Owner represents, warrants and agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Development Owner will use its best efforts to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Declaration.

(m) The Development Owner warrants that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(n) The Development Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of the United States, the State and any other Governmental Authority applicable to the Owner of the Development, including, without limitation, the following: the Civil Rights Act of 1964 (42 U.S.C. 2000(d)); Executive Order 11-63, as amended by Executive Order 12259; Executive Order 11246; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.); Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); Fair Housing Act (42 U.S.C. 3601 et seq.); the Americans with Disabilities Act of 1990 (P.L. 101-336; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.); Section 3 of the Housing and Urban Development Act of 1968; Executive Orders 11625, 12432 and 12138, as amended; the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 et seq.); the Davis-Bacon Act (40 U.S.C. § 276a et seq.); Sections 103 and 107 of the Work Hours and Safety Standards Act. (40 U.S.C. § 327 et seq.); the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4201 et seq.); the Housing and Community Development Act of 1974; the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); ("NEPA"); the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4321 et seq.); the State of Texas Senate Bill 1356; Title 8, and Chapter 92 of the Texas Property Code; Solid Waste Disposal Act TEX. HEALTH & SAFETY CODE Ann. Ch. 361 (Vernon's 1992); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. TEX. HEALTH & SAFETY CODE Ann. Ch 363 (Vernon's 1992); County Solid Waste Control Act. TEX. HEALTH & SAFETY CODE Ann. Ch 364 (Vernon's 1992); Texas Clean Air Act, TEX. HEALTH AND SAFETY CODE Ann. Ch. 382 (Vernon's 1992); and Hazardous Communication Act, TEXAS HEALTH AND SAFETY CODE Ann. Ch. 502 (Vernon's 1992); and such Governmental Requirements as may be from time to time amended or superseded and all of their implementing regulations, as may be amended.

(o) The Development Owner agrees to apply for and accept renewal of any rent subsidy contracts from which the Development benefits, if such subsidies are sufficient to maintain the economic viability of the Development.

#### SECTION 4 – INCOME RESTRICTIONS/RENTAL RESTRICTIONS

The Development Owner represents, warrants and covenants throughout the Term of this Declaration and in order to satisfy the requirements of Section 42 of the Code that at least 40% or more of the Units in the Development are and will continuously be maintained as both Rent-Restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income.

(a) The determination of whether a Tenant is a Low-Income Tenant shall be made by the Development Owner according to current rules on the basis of the current income of such Low-Income Tenant. The Development Owner shall utilize forms as permitted from time to time by the Department for providing this certification. If, upon any such certification, the Tenant of a Low-Income Unit who was, at the last income certification, a Low-Income Tenant, is found no longer to be a Low-Income Tenant, such Unit will continue to be treated as a Low-Income Unit until the next available Unit of comparable or smaller size in the building in which such Unit is located is rented to a person who is not a Low-Income Tenant. A Low-Income Unit that has been vacated will continue to be treated as a Low-Income Unit, provided that (i) reasonable attempts are made to rent the Unit and (ii) no other Units of comparable or smaller size in the Development are rented to persons who are not Low-Income Tenants.



(b) During the compliance period, in no case will a Unit be treated as a Low-Income Unit if all the Tenants of the Unit are students (as determined under Section 151(c)(4) of the Code); provided, however, that such rule shall not apply to the types of students identified at Section 42(i)(3)(D) of the Code. After the compliance period, student status will be monitored in accordance with Department Rules.

(c) The Development will contain a total of **140** Units (including Units occupied by a resident manager or other employee, such that they are not treated as "residential rental units" for purposes of Section 42 of the Code), of which **140** Units treated as residential rental units will be Low-Income Units. The amount of Tax Credits allocated to the Development is based on the requirement that the Minimum Applicable Fraction for each building in the Development will be as specified, building-by-building, at Appendix E hereto. During the Term of this Declaration, Units at the Development shall be leased and rented or made available to members of the general public who qualify as Low-Income Tenants; such that each building in the Development shall at all times satisfy the Minimum Applicable Fraction for such building. The Development Owner's failure to ensure that each building in the Development complies with such requirement will cause the Department to report such fact to the Service and may result in the reduction and recapture by the Service of Tax Credits, as well as other enforcement action. After the compliance period, Minimum Applicable Fraction will be monitored in accordance with Department Rules.

(d) The Development and the Development Owner are subject to additional and/or modified requirements, if any, set forth at Appendix A, which requirements are incorporated herein and made a part hereof.

(e) The Development Owner shall not discriminate on the basis of race, color, national origin, religion, sex, familial status, or disability in the lease, use or occupancy of the Development Improvements or in connection with the employment or application for employment of persons for the operation and management of the Development and shall not deny admission to any person exclusively on the basis of such person receiving rental assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.

(f) The Development Owner acknowledges that whether a Tenant is a Low-Income Tenant is a matter of fact, to be determined in accordance with applicable law, and the Development's Owner's determination as to such matter is not binding upon the Department or the Service.

(g) During the Compliance Period and the Extended Use Period, the Development Owner, notwithstanding anything herein to the contrary, shall not (1) evict or terminate the tenancy of a Tenant of any Low-Income Unit other than for good cause nor (2) increase the gross rent with respect to a low-income unit not otherwise permitted by Section 42 of the Code.

#### SECTION 5 – TERM OF DECLARATION

(a) This Declaration shall become effective with respect to a building in the Development on the first day of the Compliance Period for such building and shall terminate on the last day of the Extended Use Period, unless this Agreement is earlier terminated pursuant to Section 5(b) hereof (the "Term").

(b) Notwithstanding subsection (a) above, but subject to any modified or additional requirements set forth in Appendix A, in which event the terms of this Agreement shall be modified as applicable, this Declaration shall terminate:

(1) with respect to any building in the Development, on the date such building is acquired by foreclosure (or instrument in lieu of foreclosure), upon the recorded declaration of termination of the party so acquiring the building, unless the Secretary or his delegate determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period. If any party acquiring a building by foreclosure (or instrument in lieu of foreclosure) fails to record a declaration terminating this Declaration, the building shall remain subject to this Declaration, and the eligibility of such party to receive Tax Credits shall not be adversely affected, if such party continues to comply with Section 42 of the Code and the terms of this Declaration; or

(2) following the end of the Compliance Period, but not later than 30 years following the date upon which the Development was first placed in service pursuant to the requirements of this Declaration, if the Development Owner has properly requested that the Department assist in procuring a "Qualified Contract", as defined in the Code, for the acquisition of a building and the Department is unable to present a Qualified Contract. To properly request the Department's assistance in procuring a Qualified Contract for the acquisition of a building, the Development Owner must follow the procedures outlined in the Department Rules.

(3) following the end of the Compliance Period, subject to the consent of the Department, upon the acquisition of the Development by the Tenants of the Development, pursuant to a right of first refusal under Section 42(i)(7) of the Code.

(c) If this Declaration is terminated pursuant to subsection (b) above and notwithstanding anything herein to the contrary, the Tenant of any Low-Income Unit on the date of such termination shall be entitled to occupy such Unit in accordance with the provisions of this Declaration for a period of three years following such termination date, provided, however, that upon a showing of good cause, such Tenant's tenancy may be terminated or such Tenant evicted.

## SECTION 6 – ENFORCEMENT, ADMINISTRATION AND COMPLIANCE

(a) The Development Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or this Declaration. Moreover, the Development Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary in the sole opinion and at the request of the Department) to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, the Service, or the United States Department of Housing and Urban Development, from time to time, pertaining to the Development Owner's obligations under Section 42 of the Code and affecting the Development.

(b) The Development Owner acknowledges that the primary purpose for requiring compliance by the Development Owner with the restrictions provided in this Declaration is to assure compliance of the Development and by the Development Owner with Section 42 of the Code and the Department Rules, AND BY REASON THEREOF, THE DEVELOPMENT OWNER, IN CONSIDERATION FOR RECEIVING THE TAX CREDITS FOR THIS DEVELOPMENT, HEREBY AGREES THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE APPLICABLE INCOME LIMITATION UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER TENANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE DEVELOPMENT OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Development Owner hereby further specifically acknowledges that the beneficiaries of the Development Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder. The Development Owner, still further, acknowledges and agrees that any party which brings an action to enforce any requirement of this Declaration, whether by specific performance or otherwise, shall be entitled, if successful, to recover such party's reasonable attorney's fees.

(c) The Development Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Development compliance under Section 42 of the Code.

(d) The Development Owner acknowledges that the Department is required, pursuant to Section 42(m)(1)(B)(iii) of the Code, (i) to monitor the Development Owner's and the Development's compliance with the requirements of Section 42 of the Code, and (ii) to notify the Service in accordance with the Code and the rules of the Service of any noncompliance which is found. The Development Owner agrees (I) to maintain records that substantiate and document such compliance, (II) to take all actions required by the Department pursuant to the Department Compliance Monitoring Procedures to assist or cooperate with the Department in monitoring such compliance, and (III) to pay the fee prescribed by the Department with respect to such monitoring.

(e) The Development Owner agrees that the Department may enforce all state and federal law, the Department Rules and the terms of any allocation of Tax Credits through this Declaration, and utilize for such purposes any and all remedies available to the Department including but not limited to administrative or judicial action, appointment of trustee or receiver, or assume the management and operations of the Development.

(f) The Development Owner agrees the Department may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Development, enter and inspect the Development to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(g) The Development Owner agrees the Department may, at reasonable times and upon adequate notice, examine and photocopy all books and records, request and receive from the Development Owner one or more reports, relating to the ownership, operations, capitalization, reserve funds, income, expenses and other financial and regulatory matters of the Development or the Development Owner. This includes compliance with the Annual Owner's Certification of Development Completion, Fair Housing Sponsor report, and Owner's Financial Certification in a form and timeline as prescribed by the Department.

(h) The Development Owner agrees that the Department may at any time order it and/or its managing agent or Development manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, Department Rules, or term of an agreement regarding the Development, and that the Department may file and prosecute a complaint against a managing agent, Development manager, or the Development Owner for a violation of any applicable law or ordinance. The Development Owner acknowledges and agrees that, in the event that the Development Owner is found to have violated an applicable law, ordinance, Department Rules, or term of an agreement regarding the Development, the Department shall have the right, among other remedies and without limitation, to limit or deny participation by the Development Owner in any of the programs operated or administered by the Department; and/or assess appropriate monetary penalties.

(i) Upon a determination by the Department that the Development Owner has failed to maintain the Development in good and habitable condition and suitable for occupancy as hereinabove required, the Development Owner agrees, upon the Department's direction, to establish a reserve for replacement and repairs to the Development in such initial amount and with such monthly deposits as the Department may direct. Such reserve shall be held for the benefit of the Development Owner and the Development by such party as the Department shall direct, and disbursements shall be made there from only upon direction of or approval by the Department.

(j) The Development Owner agrees to indemnify and hold harmless the Board members, Department officers, directors and employees from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Department as a result of any material inaccuracy in any of the representations and warranties contained in this Declaration, or as a result of any action or inaction by the Development Owner, including claims by third parties.

(k) The Development Owner agrees that should any claims, demands, suits or other legal proceedings be made or instituted by any person against the Department which arise out of any of the matters relating to this Declaration, Development Owner will cooperate fully with the Department in the defense or other disposition thereof.

(l) The Development Owner agrees to furnish the Department within 10 days of receipt with copies of all correspondence between the Development Owner and the Service with respect to the Development, other than tax returns and routine, periodic reports filed with the Service.

(m) The Development Owner agrees to notify the Department and modify the credit allocation identified on the IRS form 8609, if necessary, if any federal grant or loan of below market rate federal funds is received with respect to the Development at any time during the Compliance period.

## SECTION 7 – FEES

(a) To compensate the Department for its responsibilities pursuant to the Act and the Code, the Development Owner shall pay to the Department an annual compliance monitoring fee for the first twelve month period of this Declaration in the amount of \$40 per Low-Income Unit in the Development. In no event shall the fee be less than \$100.

(b) In addition to the compliance monitoring fee required by Section 7(a), the Development Owner shall pay to the Department a building inspection fee for any inspections that the Department requires or performs. The amount of such fee(s) will be determined by the Department in accordance with Department Rules.

(c) If the Department shall find the Development not to be in compliance with the terms hereof, the Development Owner shall pay to the Department (i) an additional administrative fee in an amount prescribed from time to time by the Department, which amount for the first twelve month period of this Declaration, shall not exceed \$25 per Unit (without regard to the number of Low-Income Units), for additional monitoring and enforcement activities undertaken with respect to the Development and (ii) all amounts required to reimburse the Department for its expenses in performing such additional monitoring and enforcement activities. The administrative fee payable in the event of noncompliance shall be in addition to, and distinct from, the amount due pursuant to Section 7(a), as well as any reimbursements of costs and legal fees to which the Department may be entitled as a result of judicial enforcement action, and such fee shall be payable without respect to whether the Department undertakes or succeeds in judicial enforcement activities, and any right to be compensated therefore, for a period of up to three years following its most recent finding of noncompliance with respect to the Development.

(d) For each successive twelve month period following the initial twelve month period of this Declaration, the administrative fees payable to the Department hereunder shall be the amounts established for the most recent administrative fee, multiplied by the increase in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor (or generally recognized successor to such Index) for the same twelve month period of time.

(e) The Development Owner agrees that it will pay the annual compliance monitoring fee and the building inspection fee(s) at the times required by the Department therefore and that it will pay all additional charges, fees, and expenses assessed hereunder by the Department within ten (10) days of receipt of written notice of any such assessment.

#### SECTION 8 - MISCELLANEOUS

(a) Severability. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, delivered by hand, or delivered by any other method permitted by law, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

#### TO THE DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS  
P O Box 13941  
AUSTIN, TEXAS 78711-3941  
ATTN: COMPLIANCE DIVISION

#### TO THE DEVELOPMENT OWNER:

WYNNEWOOD SENIORS HOUSING, LP  
511 N. AKARD ST., SUITE 301  
DALLAS, TEXAS 75201  
ATTN: JOHN P. GREENAN

The Department, and the Development Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) Amendment. This Agreement may not be amended or modified except by written instrument executed by both Development Owner and Department, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the real property records in the county where the Property is located. Upon request by the Department, the Development Owner agrees that it will take all actions necessary to effect any amendment of this Declaration which may be necessary in the Department's sole discretion to comply with the Code, and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Tax Credits.

(d) Governing Law. This Declaration shall be governed by the laws of the State of Texas, and, where applicable, the laws of the United States of America.

(e) Survival of Obligations. The obligations of the Development Owner as set forth herein and in the Application shall survive the allocation of the Tax Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

(f) Interpretation. The Department's interpretation of this Declaration shall be controlling for purposes of determining whether (i) the Compliance Period and/or Credit Period shall have commenced, (ii) this Declaration shall have been terminated in accordance with Section 5 hereof, and (iii) the Additional Use Restrictions elected at Appendix A hereto, if any, shall have been complied with.

IN WITNESS WHEREOF, THE DEVELOPMENT OWNER AND THE DEPARTMENT HAVE CAUSED THIS DECLARATION TO BE SIGNED BY THEIR DULY AUTHORIZED REPRESENTATIVES, AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.

**DEVELOPMENT OWNER:**

WYNNEWOOD SENIORS HOUSING, LP  
A TEXAS LIMITED PARTNERSHIP

BY: WYNNEWOOD SENIORS HOUSING GP, LLC  
A TEXAS LIMITED LIABILITY COMPANY, ITS GENERAL PARTNER

BY: CENTRAL DALLAS COMMUNITY DEVELOPMENT CORPORATION  
A NONPROFIT CORPORATION, ITS SOLE MEMBER

BY: [Signature]  
NAME: John P. Greenan  
TITLE: Executive Director

THE STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS DAY PERSONALLY APPEARED John P. Greenan, KNOWN TO ME TO BE THE Executive Director OF CENTRAL DALLAS COMMUNITY DEVELOPMENT CORPORATION, A NONPROFIT CORPORATION, ITS SOLE MEMBER OF WYNNEWOOD SENIORS HOUSING GP, LLC, A TEXAS LIMITED LIABILITY COMPANY, GENERAL PARTNER OF WYNNEWOOD SENIORS HOUSING, LP, A TEXAS LIMITED PARTNERSHIP, THE LIMITED PARTNERSHIP THAT EXECUTED THE FOREGOING INSTRUMENT, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT THE SAME WAS THE ACT OF SAID LIMITED PARTNERSHIP, AND THAT HE/SHE EXECUTED THE SAME AS THE ACT OF SUCH LIMITED PARTNERSHIP FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 7<sup>th</sup> DAY OF September, 2012.

(SEAL)

[Signature]  
NOTARY PUBLIC SIGNATURE



NOTARY PUBLIC, STATE OF: Texas  
COUNTY OF: Dallas  
MY COMMISSION EXPIRES: 8-18-14

DEPARTMENT:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
A PUBLIC AND OFFICIAL AGENCY OF THE STATE OF TEXAS

BY: *[Signature]*  
NAME: **TOM GOURIS**  
TITLE: **DEPUTY EXECUTIVE DIRECTOR**

THE STATE OF TEXAS   §  
  §  
COUNTY OF TRAVIS   §

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED,  
Tom Gouris OF THE **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, A PUBLIC  
AND OFFICIAL AGENCY OF THE STATE OF TEXAS, ON BEHALF OF SUCH AGENCY.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 10<sup>th</sup> DAY OF Sept., 2012

(SEAL)

*Leah Sargent Rosas*  
NOTARY PUBLIC SIGNATURE



NOTARY PUBLIC, STATE OF: \_\_\_\_\_  
COUNTY OF: \_\_\_\_\_  
MY COMMISSION EXPIRES: \_\_\_\_\_



## EXHIBIT A TO DECLARATION – LEGAL DESCRIPTION

### 8.4528 ACRES

Description of an 8.4528 acre tract of land situated in the John W. Wright Survey, Abstract No. 1622, City of Dallas, Dallas County, Texas and being a portion of Wynnewood Gardens No. 4, Eighth Section of Wynnewood, an addition to the City of Dallas, Texas according to the plat thereof recorded in Volume 12, Pages 78-A, B and C, Map Records, Dallas County, Texas; said 8.4528 acre tract also being a portion of Tract 1 conveyed to WCH Limited Partnership in Special Warranty Deed recorded in Volume 93237, Page 5104, Deed Records, Dallas County, Texas; said 11.6297 acre tract being more particularly described by metes and bounds as follows:

COMMENCING, at a 1/2-inch iron rod found at the intersection of the north right-of-way line of Wynnewood Drive (70 feet wide) and the easterly right-of-way line of Llewellyn Avenue (80 feet wide); said point also being the southwest corner of said Eighth Section of Wynnewood;

THENCE, North 17 degrees 43 minutes 07 seconds West, with said easterly right-of-way line of Llewellyn Avenue, a distance of 182.08 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 700.94 feet;

THENCE, northwesterly, with said curve to the right and transitioning from the easterly right-of-way line of Llewellyn Avenue to the east right-of-way line of Pratt Street (50 feet wide), through a central angle of 25 degrees 22 minutes 16 seconds, an arc distance of 310.38 feet (chord bears North 05 degrees 02 minutes 02 seconds West, 307.85 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve;

THENCE, with the said east right-of-way line of Pratt Street, the following metes and bounds;

North 07 degrees 39 minutes 06 seconds East, a distance of 15.10 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 1,884.86 feet;

Northeasterly, with said curve to the right, through a central angle of 06 degrees 54 minutes 47 seconds, an arc distance of 227.42 feet (chord bears North 11 degrees 06 minutes 29 seconds East, 227.28 feet) to a "+" cut in concrete set at the end of said curve;

North 14 degrees 33 minutes 56 seconds East, a distance of 3.30 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the right having a radius of 3,249.04 feet;

Northeasterly, with said curve to the right, through a central angle of 11 degrees 45 minutes 24 seconds, an arc distance of 666.68 feet (chord bears North 20 degrees 26 minutes 35 seconds East, 665.51 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set (1/2-inch iron rod found South 68 degrees 34 minutes 11 seconds East, 1.14 feet) at the end of said curve;

North 26 degrees 19 minutes 20 seconds East, a distance of 27.24 feet to the **POINT OF BEGINNING** of said 8.4528 acre tract;



EXHIBIT A TO DECLARATION – LEGAL DESCRIPTION – PAGE 2

THENCE, with the said east right-of-way line of Pratt Street, the following metes and bounds;

North 26 degrees 19 minutes 20 seconds East, a distance of 251.28 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set (1/2-inch iron rod found South 76 degrees 21 minutes 51 seconds East, 1.00 feet) at the beginning of a curve to the right having a radius of 1,884.86 feet;

Northeasterly, with said curve to the right, through a central angle of 18 degrees 50 minutes 00 seconds, an arc distance of 619.56 feet (chord bears North 35 degrees 44 minutes 17 seconds East, 616.77 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve;

North 45 degrees 09 minutes 20 seconds East, a distance of 359.96 feet to a 1/2-inch iron rod found at the beginning of a curve to the right having a radius of 452.82 feet;

Northeasterly, with said curve to the right, through a central angle of 15 degrees 58 minutes 52 seconds, an arc distance of 126.30 feet (chord bears North 53 degrees 08 minutes 43 seconds East, 125.89 feet) to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the end of said curve; said point also being the beginning of a curve to the right having a radius of 125.00 feet;

Southeasterly, with said curve to the right, through a central angle of 60 degrees 37 minutes 48 seconds, an arc distance of 132.27 feet (chord bears South 88 degrees 32 minutes 57 seconds East, 126.19 feet) to a 1/2-inch iron rod found at the end of said curve; said point also being the beginning of a curve to the right having a radius of 32.99 feet;

Southeasterly, with said curve to the right, through a central angle of 90 degrees 00 minutes 00 seconds, an arc distance of 51.82 feet (chord bears South 13 degrees 14 minutes 03 seconds East, 46.65 feet) to a 1/2-inch iron rod found at the end of said curve; said point also being on the west right-of-way line of Zang Boulevard (125 feet wide);

THENCE, with the said west right-of-way line of Zang Boulevard, the following metes and bounds;

South 31 degrees 46 minutes 00 seconds West, 752.12 feet to a 5/8-inch iron rod with yellow plastic cap stamped "GSES, INC., RPLS 4804" set at the beginning of a curve to the left having a radius of 3,882.22;

Southwesterly, with said curve to the left, through a central angle of 08 degrees 11 minutes 03 seconds, an arc distance of 554.54 feet (chord bears South 27 degrees 40 minutes 29 seconds West, 554.06 feet) to a point for corner;

THENCE, North 63 degrees 40 minutes 40 seconds West, a distance of 333.68 feet to the POINT OF BEGINNING;

CONTAINING, 368,206 square feet or 8.4528 acres of land, more or less.

## EXHIBIT B – PERMITTED ENCUMBRANCES AND EXCEPTIONS

1. Restrictive covenants described in Partial Release and Agreement to Restrict dated \_\_\_\_\_, 2012, filed \_\_\_\_\_/2012, cc# \_\_\_\_\_, Real Property Records, Dallas County, Texas.
2. Deed of Trust Construction Loan from Wynnewood Seniors Housing, LP, a Texas limited partnership, to PRLAP, Inc., a Texas corporation, Trustee, dated 07/24/2012, filed 07/24/2012, cc#201200213771, Real Property Records, Dallas County, Texas, securing the payment of one note in the principal sum of \$16,000,000, payable to Banc of America Community Development Corporation as securing other indebtedness therein, if any; said note having been assigned to Bank of America, N.A. by instrument filed \_\_\_\_\_/2012, cc#2012\_\_\_\_\_, Real Property Records, Dallas County, Texas, and as affected by Amended and Restated Deed of Trust, Assignment, Security Agreement and Fixture Filing, by Wynnewood Seniors Housing, LP, a Texas limited partnership, to and in favor of PRLAP, Inc., a Texas corporation, as Trustee and Bank of America, N.A., a national banking association, as beneficiary, dated \_\_\_\_\_/2012, filed \_\_\_\_\_/2012, cc#2012\_\_\_\_\_, Real Property Records, Dallas County, Texas, securing the payment of one note in the principal sum of \$14,750,000, payable to Bank of America, N.A.
3. Right of Entry Agreement with Warner Amex Cable Communications, Inc., filed 09/19/1981, recorded in Volume 81183, Page 378, Real Property Records of Dallas County, Texas; and as noted on survey of Robert W. Schneeberg, RPLS No. 4804, dated 04/23/2012.
4. Easement granted by Wynnewood Gardens No. 4, a corporation, to Dallas Power & Light Company and Southwestern Bell Telephone Company, filed 02/24/1948, recorded in Volume 2944, Page 443, Real Property Records of Dallas County, Texas, and as noted on survey of Robert W. Schneeberg, RPLS No. 4804, dated 04/23/2012.
5. Terms, Provisions and conditions contained in License Agreement as evidenced by Ordinance No. 21295 filed 11/24/1992, recorded in Volume 99182, Page 389, Real Property Records of Dallas County, Texas, and as noted on survey of Robert W. Schneeberg, RPLS No. 4804, dated 04/23/2012.
6. Terms, provisions, conditions and easements contained in Easement and Memorandum of Agreement filed 03/10/2011, cc#201100062918, Real Property Records, Dallas County, Texas, and as noted on survey of Robert W. Schneeberg, RPLS No. 4804, dated 04/23/2012.
7. Terms, provisions, conditions and easements contained in Temporary Access Easement and License to Demolish, dated 07/03/2012, filed 07/24/2012, cc#201200213772, Real Property Records, Dallas County, Texas.
8. Power poles, overhead electric lines, and sanitary sewer manholes as shown on survey of Robert W. Schneeberg, RPLS No. 4804, dated 04/23/2012.
9. Declaration of Land Use Covenants To Provide Social Services between Wynnewood Senior Housing, LP and the City of Dallas, dated \_\_\_\_\_, 2012, filed \_\_\_\_\_/2012, cc# \_\_\_\_\_, Real Property Records, Dallas County, Texas.

**APPENDIX A – ADDITIONAL USE RESTRICTIONS  
2010 ALLOCATION WITH 2011 FORWARD COMMITMENT**

**RENT AND OCCUPANCY RESTRICTIONS**

INCOME LIMIT	RENT LIMIT	NUMBER OF UNITS
30% OF AMI	30% OF AMI	21
50% OF AMI	50% OF AMI	49
60% OF AMI	60% OF AMI	70

*If at recertification the Tenant's household income exceeds the applicable limit, to maintain compliance, the owner agrees to follow recertification guidance in accordance with the Department Rules as amended from time to time.*

**LONGER COMPLIANCE PERIOD AND EXTENDED USE PERIOD**

In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year period. Development Owner indicates below that the Development will extend the affordability period beyond the 30 years required in the Code as follows:

- Add 10 years affordability after the extended use period for a total affordability period of 40 years

**AFFIRMATIVE MARKETING FOR VETERANS**

The Development Owner agrees to affirmatively market to veterans through direct marketing or contracts with veteran's organizations. The Owner will be required to identify how they will affirmatively market to veterans and report to the Department in the annual housing report the results of the marketing efforts to veterans.

**QUALIFIED ELDERLY DEVELOPMENTS (2000 AND LATER)**

Throughout the Compliance Period, unless otherwise permitted by the Department, this Development must conform to the Federal Fair Housing Act and must be a Development which:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a Federal, State or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

**PROVISION OF SUPPORTIVE SERVICES**

The Development Owner has been awarded points based on providing tenants the following supportive services through the extended use period. Fees in addition to rent may not be charged for any of the services marked below throughout the extended use period. Services must be provided on-site or transportation to off-site services must be provided.

- Counseling services
- Credit counseling
- Financial planning assistance or courses
- Health screening services
- Health and nutritional courses
- Weekly structured chair exercise classes
- Weekly arts and crafts classes

**NOTARY PUBLIC SERVICES TO TENANTS OF THE DEVELOPMENT**

The Development will provide Notary Public Services to tenants at no cost to the tenant during regular business hours.

## APPENDIX A – ADDITIONAL USE RESTRICTIONS

**MATERIAL PARTICIPATION BY QUALIFIED NONPROFIT ORGANIZATION**

Throughout the Compliance Period, a Qualified Nonprofit Organization (as defined in Section 42(h)(5)(C) of the Code) shall hold a controlling interest in the Development as required by the Department Rules, shall materially participate (within the meaning of Section 469(h) of the Code) in the development and operation of the Development and shall otherwise meet the requirements of Section 42(h)(5) of the Code. At the time this Declaration is filed, the Qualified Nonprofit Organization which shall own such interest and shall so materially participate in the development and operation of the Development is CENTRAL DALLAS COMMUNITY DEVELOPMENT CORPORATION. The Development Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Development and (ii) if such organization is proposed to be replaced by a different Qualified Nonprofit Organization.

## APPENDIX B – ADDITIONAL USE RESTRICTIONS – ACCESSIBILITY REQUIREMENTS

### ACCESSIBILITY FOR 2002 AND LATER ALLOCATIONS

*The Development will comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.*

**ACCESSIBILITY REQUIREMENTS FOR NEW CONSTRUCTION, REHABILITATION OF PROPERTIES BUILT AFTER 7/11/88 & SUBSTANTIAL ALTERATIONS:**

A minimum of 5% of the total dwelling Units or at least one Unit, whichever is greater, shall be made accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS), meets this requirement. An additional two percent of the total dwelling Units, or at least one Unit, whichever is greater, shall be accessible for persons with hearing or vision impairments. At the time this declaration is filed, the following units are fully UFAS accessible:

- Mobility Accessible: **2106,2112, 2113, 3112, 4109, 4110, 5102**
- Hearing or Visual Impairment Accessible: **3110, 4105, 6102**

*The owner understands and agrees that if the above reflected Unit(s) listing does not equal 5% of the total dwelling units, that any and all alterations made to any element within any Unit during the above specified Affordability Period must be in compliance with UFAS until 5% of the total dwelling units are in compliance with UFAS.*

## APPENDIX C – ADDITIONAL USE RESTRICTIONS – AMENITY REQUIREMENTS

All of the following amenities must be compliant with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (§42 U.S.C. §3601 et seq.), and the Fair Housing Amendments Act of 1988 (§42 U.S.C. §3601 et seq.); the Civil Rights Act of 1964 (§42 U.S.C. §2000a et seq.); the Americans with Disabilities Act of 1990 (§42 U.S.C. §12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards (§2306.257; §2306.6705(7)). In addition, Pursuant to §2306.6722, any Development supported with a Housing Tax Credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. (§2306.6722 and §2306.6730). At the time this declaration is filed, the owner has provided a certification from the Development engineer, an accredited architect or Department-approved third party accessibility specialist that the above stipulations have been sufficiently met as required in the 2010 Qualified Allocation Plan (QAP) and Rules.

### THRESHOLD CRITERIA:

The owner has represented that the following amenities will be present at the property through the extended use period. Fees in addition to rent may not be charged for any of the amenities marked below throughout the extended use period. The amenities selected must be made available for the benefit of all tenants. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department. The following section reflects the amenities elected at the time of application to meet the minimum threshold of points required.

- Units must be wired with RG-6 COAX or better & CAT3 phone cable or better, wired to each bedroom, dining room & living room
- Blinds or window coverings for all windows
- Disposal and Energy-Star or equivalently rated dishwasher
- Oven/Range
- Exhaust/vent fans in bathrooms
- Energy-Star or equivalently rated fans in living areas and bedrooms
- Energy-Star or equivalently rated refrigerator
- Energy-Star or equivalently rated lighting fixtures in all Units
- Full perimeter fencing
- Controlled gate access
- Gazebo w/sitting area
- Accessible walking/jogging path separate from a sidewalk
- Barbecue grill and picnic table – at least one of each for every 50 Units
- Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine
- Senior Activity Room
- Health Screening Room
- Horseshoe pit, putting green or shuffleboard court

## APPENDIX C – ADDITIONAL USE RESTRICTIONS – AMENITY REQUIREMENTS

### SELECTION CRITERIA:

The owner has represented that the following amenities will be present at the property through the extended use period. Fees in addition to rent may not be charged for any of the amenities marked below throughout the extended use period. The owner was awarded points based on providing specific amenity and quality features in every Unit at no extra charge to the tenant. The following section identifies the amenities elected at the time of application for which points were awarded.

### UNIT AMENITIES

- Covered entries
- Nine foot ceilings in living room and all bedrooms (at minimum)
- Microwave ovens
- Self-cleaning or continuous cleaning ovens
- Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms)
- Refrigerator with icemaker
- Laundry connections
- Thirty year architectural shingle roofing
- R-15 Walls / R-30 Ceilings (rating of wall system)
- Fire sprinklers in all Units

### GREEN BUILDING INITIATIVES

- Water conserving features
  - Install high efficiency toilets using less than or equal to 1.28 gallons per flush, or Water Sense certified; and/or
  - Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons per minute and kitchen faucets that do not exceed 1.5 gallons per minute. This applies to all fixtures throughout the development. Rehabilitation projects may choose to install compliant faucet aerators instead of replacing entire faucets
- Sub metered utility meters
  - Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project
- Implementation of EPA's Best Management Practices for erosion and sedimentation control during construction
- Water permeable walkways (at least 20% of walkways and parking)

## APPENDIX D – ADDITIONAL USE RESTRICTIONS – RIGHT OF FIRST REFUSAL

### AGREEMENT TO THE PROVISION OF RIGHT OF FIRST REFUSAL

The Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization (as defined in §42 (h) (5) (C) of the Code), the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization").

The following terms are hereby incorporated into this Declaration:

(i) Upon the earlier to occur of:

(I) the Development Owner's determination to sell the Development, or (II) the Development Owner's request to the Department, pursuant to §42 (h)(6)(E)(i)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42 (h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to the date upon which the Development Owner intends to sell the Development.

(ii) During the two years following the giving of Notice of Intent, the Development Owner may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(I) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department;

(II) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(III) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(IV) If, during such two year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in subparagraphs (I) – (III) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (I) – (III) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organization it shall choose.

(iii) At any time after the fifteenth year of the Compliance Period, but no earlier than two years after delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by this Declaration if: (x) no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or (y) a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(iv) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

(v) The Department shall, at the request of the Development Owner, identify in this Declaration a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in paragraph (ii) of this section.

(vi) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.



**APPENDIX E -- MINIMUM APPLICABLE FRACTION BY BUILDING**

BUILDING NUMBER	BUILDING IDENTIFICATION NUMBER (BIN)	MINIMUM APPLICABLE FRACTION
1.	TX-1100301	100%

**Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
09/17/2012 11:33:28 AM  
\$100.00  
201200274918**



# COATS | ROSE

*A Professional Corporation*

TAMEA A. DULA  
OF COUNSEL

tdula@coatsrose.com  
Direct Dial  
(713) 653-7322  
Direct Fax  
(713) 890-3918

April 11, 2014

**By Email to [raquel.morales@tdhca.state.tx.us](mailto:raquel.morales@tdhca.state.tx.us)**

Ms. Raquel Morales  
Senior Asset Manager – Asset Management  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

RE: TDHCA # 95081/ 93057; Parks at Wynnewood, Dallas, Dallas County, Texas;  
Request for Material LURA Amendment.

Dear Raquel:

As discussed, this letter is a follow-up on my request to remove the Material LURA Amendment from the Agenda for the April 10, 2014 TDHCA Board Meeting. Our client, Banc of America Community Development Corporation, and its partner in this redevelopment project, Central Dallas Community Development Corporation, would like the Asset Management Division to reconsider the need for an additional two years added to the Parks at Wynnewood LURA term. I discussed this matter with Tom Gouris, Cari Garcia and Jean Latsha in a call on March 25<sup>th</sup>, but Asset Management's recommendation to the TDHCA Board had been approved by ERAC with the extra two years of LURA term included, and there was no time available to ask for reconsideration by ERAC prior to publishing the Staff Recommendation for today's Board Meeting.

By letter to you dated March 7, 2014, I requested a material amendment for the Parks at Wynnewood LURA (the "1995 LURA"). Paragraph 7 of that letter stated:

**7. Addressing the length of the LURA:** The 1995 LURA will be in effect until December 31, 2032, which reflects an increase in term of two years, which was negotiated with the TDHCA when the first phase of redevelopment was under discussion. The new Land Use Restriction Agreement on the Family Development will be for a 37-year affordability period, representing 2 years

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307  
Phone: 713-651-0111 Fax: 713-651-0220  
Web: [www.coatsrose.com](http://www.coatsrose.com)

Ms. Raquel Morales, Senior Asset Manager

April 11, 2014

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during relocation-demolition-construction; and a 35-year Extended Use Period (per the tax credit application).

The first sentence of Paragraph 7 was intended to point out that the 1995 LURA had already been extended by two years in connection with the first phase of redevelopment, the 140-unit Wynnewood Seniors Housing (#10044/11003) ("Phase 1"). When requesting the material LURA amendment required for Phase 1, we offered a two-year extension of the 1995 LURA because Phase 1 required the demolition of 108 units of housing. This left only 296 units of housing available at Parks during the two-year construction period for Phase 1, instead of the 404 units required under the 1995 LURA. In compensation, the Parks owner agreed to extend the 1995 LURA by an additional two years. After the two-year construction period, Phase 1 provided 140 units of housing, which with the 296 units at Parks provided a total of 436 housing units, more than meeting the original 404-unit obligation.

Please note that we did not make the same offer in connection with Wynnewood Family Housing (#13234) ("Phase 2"). The Phase 2 development will require the demolition of 22 units of housing, reducing the 296 units required at Parks to 274 units available during the construction of the 160-unit Phase 2. However, when you combine those 274 units with the 140 Phase 1 units, there are 411 total units of housing available during the Phase 2 relocation/demolition/construction period, which more than meets the original 404-unit obligation. Because more than 404 units of housing would always be available during the relocation/demolition/construction of Phase 2, we did not think it necessary or equitable to further extend the 1995 LURA.

We note that the second sentence of Paragraph 7 was meant to indicate that, assuming that a partial release of the Phase 2 site from the 1995 LURA was given as originally requested, the developers would agree to immediately place the new LURA on the Phase 2 site, so that the land would not be without restrictive covenants at any time. In order to accomplish that purpose, we proposed a 37-year term for the Phase 2 LURA, adding on an extra two years for the construction period when no units would be available on the Phase 2 site. Asset Management has indicated that the requested partial release is not necessary because both Parks and Phase 2 are restricted to the same General population, therefore the two LURAs may be overlaid without inconsistencies. For this reason, the LURA for Phase 2 can be recorded at project completion, in the customary manner and therefore should be for a 35-year term, as shown in the 2013 Housing Tax Credit Application for Phase 2.

I would like to explain why the further extension of the 1995 LURA by an additional two years (i.e., until December 31, 2034) is of such concern. The issue is the political repercussions of further extending the 1995 LURA. The community was initially very much against the redevelopment of Parks because use of Housing Tax Credit financing requires that the redeveloped project be restricted to affordable housing purposes for a term that extends the original 1995 LURA term by 15 years or more. The developers spent an extensive amount of time meeting with the neighborhood associations in the area and explaining the benefits of replacing the existing buildings, which are 1940's barrack-style low-income housing that is becoming more difficult and expensive to maintain in an appropriate manner. They further explained why using Housing Tax Credit financing was the most feasible means of redeveloping

the site, given that the 1995 LURA had approximately 20 years left on its term, limiting the potential for commercial financing. Another factor is that the city council member who originally supported the Phase 1 application, although somewhat reluctantly, was succeeded by a council member who believed that the area had a disproportionate share of the affordable housing in Dallas. The developers were able to win his support by amending the Phase 1 Application to use a more urban design than was originally contemplated. Phase 1 turned out to be an impressive apartment complex that has won the full support of the Wynnewood North Neighborhood Association and the council member.

Notwithstanding the success of Phase 1, the developers believe that further extending the 1995 LURA will be perceived by the community as not consistent with representations made concerning how the redevelopment would be accomplished. Aside from the necessity of extending the 1995 LURA by two years to make up for having fewer than required housing units available during the two-year construction of Phase 1, the developers have emphasized that new restrictive covenant periods will only relate to newly constructed buildings, so the community will have upgraded apartment developments in exchange for affordability periods extending beyond that of the 1995 LURA. The developers believe that the support for this phased redevelopment project will erode if the community sees that the 1940s buildings will have a longer LURA period due to Phase 2. This is especially the case since the 2014 Housing Tax Credit Application for the third phase of the redevelopment appears unlikely to receive an award due to its relatively low score. This delay in redevelopment will only provide confirmation that the redevelopment is contingent upon obtaining viable financing for the redevelopment, and that there is a possibility that redevelopment beyond Phase 2 might be substantially delayed due to availability of financing. This reality, if combined with extending the 1995 LURA by an additional two years, is likely to result in a disgruntled community that foresees old and obsolete deteriorating housing that will be there through 2034 instead of expiring at the end of 2029, in accordance with the 1995 LURA as originally structured. Community support depends on maintaining the understanding that the community will receive better quality affordable housing in return for the longer restrictions on the property. Any suggestion that the current deteriorating affordable housing might remain beyond the time period in the 1995 LURA would significantly diminish the prospects of completing the redevelopment.

### **Summary:**

In summary, we request that the Staff's Recommendation as published in the Board Book for the April 10, 2014 Board Meeting be revised as follows:

- Add as a "whereas" clause that the 274 units that will be available at Parks during the construction period, plus the 140 units that are available at Phase 1 together comprise more than the 404 units promised in the original 1995 LURA (prior to amendment).
- In the second paragraph of the "Background" portion of the Staff Recommendation, we suggest that recognition be made that the units provided in Phase 1 plus the 274 units that will be available during the Phase 2 construction period on the Parks site will together total more than the 404 units originally promised as affordable.

Ms. Raquel Morales, Senior Asset Manager

April 11, 2014

Page 4

- Provide that the amendment to the 1995 LURA will substitute the Phase 2 building and units (160) for the 8 buildings (22 units) that are being demolished, but will not include an extension of the Extended Use Period, since the redevelopment will at all times have not less than 414 restricted units available for lease.
- Provide that the Phase 2 LURA will be recorded at project completion.

Thank you for your consideration of this request. If you have any questions, please do not hesitate to call.

Sincerely,



Tamea A. Dula

cc: Tom Gouris  
Cari Garcia  
Jean Latsha  
Brian L. Roop  
Darren W. Smith  
John P. Greenan  
Barry J. Palmer

**1i**

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action to approve an Application Amendment for the Reserve at McAlister in Burlleson (#13102)

**RECOMMENDED ACTION**

**WHEREAS**, the Reserve at McAlister received an award of 9% Housing Tax Credits during the 2013 competitive cycle to construct 124 multifamily units serving the elderly population in Burlleson, Texas;

**WHEREAS**, the Applicant for the Reserve at McAlister is requesting approval of an amendment for minor changes to the site plan and a decrease in the common area of more than 3%;

**WHEREAS**, the amendment documents also identify the deletion of 30 carports originally represented as an additional change from the originally proposed application representation although not clearly requested as part of the amendment; and

**WHEREAS**, pursuant to 10 TAC §10.405(a), the Board shall reevaluate a Development that undergoes a substantial change, as identified in §10.405(a)(4);

**NOW, therefore, it is hereby**

**RESOLVED**, that the amendment of the Housing Tax Credit Application for the Reserve at McAlister is approved as presented to this meeting by approving the site plan and community building design changes and encouraging maintenance of the 30 carports and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

**BACKGROUND**

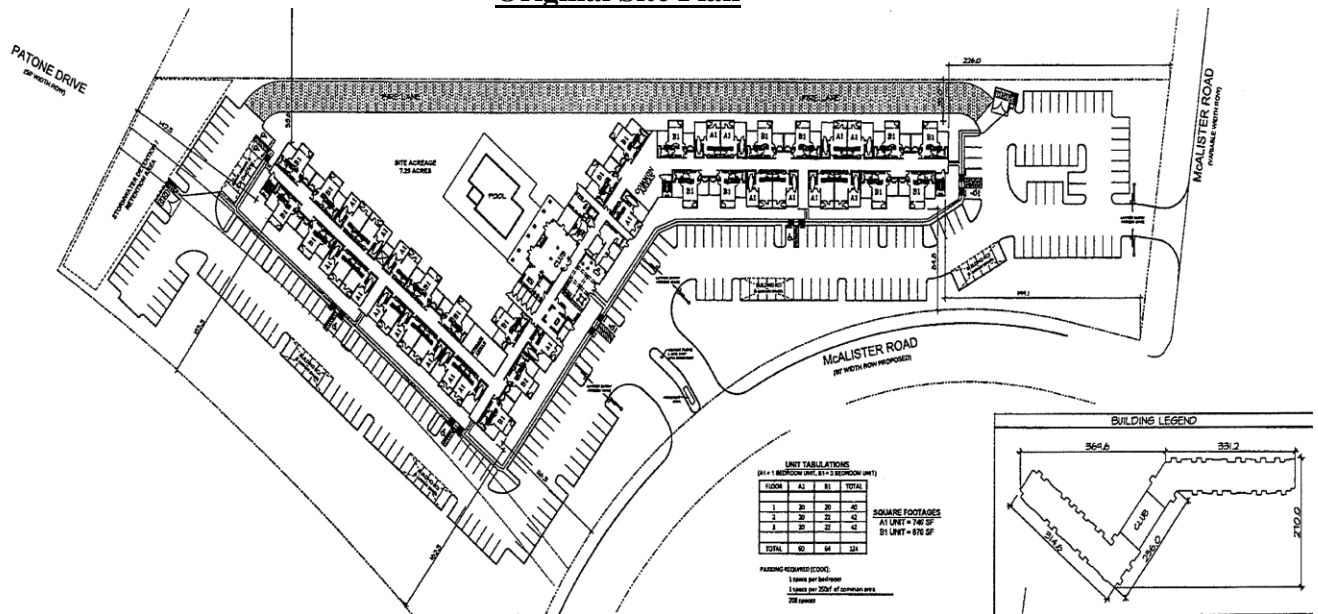
The application for the Reserve at McAlister originally proposed the new construction of one three-story residential building which would include all 124 units, interior corridors, a 9,425 s.f. common area and two elevators. The original site plan also called for storage rooms and a total of 30 carports available at no fee to residents. The Applicant requested approval for a change to the number and location of residential buildings as well as a reduction in the square footage of the common area. A revised site plan was provided reflecting three separate residential buildings,

a reduced parking area and the elimination of 30 carports. According to the Applicant, the change to the site plan resulted from (1) the fire marshal's request that the original one-building design be revised to create three buildings separated by open-air breezeways; (2) the need to reposition one of the buildings to ensure the most effective off-site and on-site drainage that resulted from additional topographic work and a regional drainage analysis not available at the time of application; and (3) a change to the number of parking spaces still providing the minimum sufficient number of spaces appropriate for a Seniors project.

Carports were originally included in the application in the architectural drawings and the development cost schedule which identified a direct cost of \$36,000 for this line item. The application did not require the owner to specify the amenities to be provided to residents as part of the threshold or selection points claimed. However, because the carports were clearly identified on the architectural drawings and the cost was included in TDHCA underwriting of the transaction, this requested change also requires approval. Staff does not support the deletion of carports. The Applicant confirmed that the deletion of the originally proposed carports was considered because they do not expect many of the residents to own a car or continue to drive. Staff has confirmed that no points were requested or could be obtained from the inclusion of the carports, nor was there any requirement to include them in the original application. However, the Applicant did represent them to the Department, prospective tenants, and the community through the submission of the plan at application and its publication on the Department's web site. The explanation of the revised plan provided by the Applicant is not a result of new information or a new requirement that could not have been anticipated by or was out of the control of the Applicant.

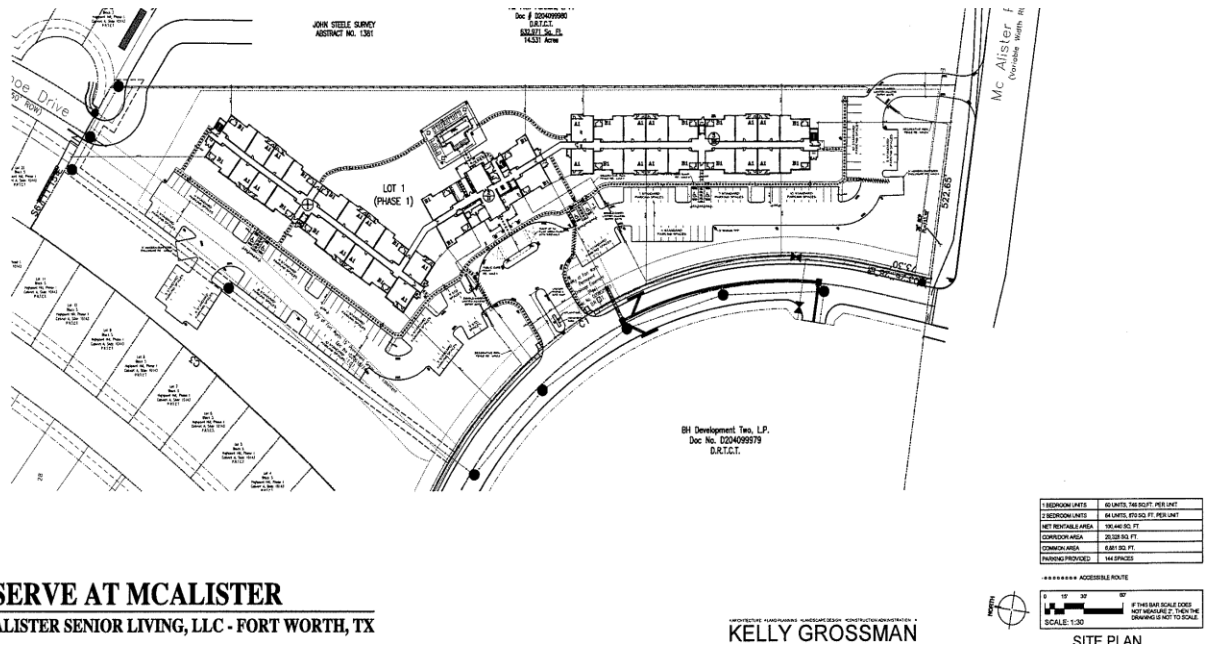
A comparison of the original and revised site plans follows.

### Original Site Plan





## Revised Site Plan



### **RESERVE AT MCALISTER**

RESERVE AT MCALISTER SENIOR LIVING, LLC - FORT WORTH, TX

KELLY GROSSMAN

The second change is a decrease in the common area square footage. According to the Applicant, changing the building mix from one building to three buildings reduced the common area from 9,425 square feet to 6,881 square feet. Specifically, changing the building configuration and the uses of some of the rooms within the clubhouse was determined, by the owner and architect, to improve the marketability of the Development by adding tenant specific amenities, such as a salon. The net change results in a reduction to the common area by more than three (3) percent, which is considered a material alteration according §10.405(a)(4)(D) of the 2013 Uniform Multifamily Rules.

The Department's Real Estate Analysis division evaluated all the changes noted to determine if the modifications would impact the original underwriting of this development (see attached). This re-evaluation concluded that there was no negative impact to the underwriting and the original credit recommendation remains unchanged.

Staff recommends approval of the Applicant's amendment request for site plan and community building changes and encourages the re-inclusion of the carports as represented in the original site plan.

**Addendum to Underwriting Report**

TDHCA Application #: 13102 Program(s): 9% LIHTC

**Reserve at McAlister**

Address/Location: North of McAlister Road and East of Hemphill Street

City: Fort Worth County: Tarrant Zip: 76028

APPLICATION HISTORY	
Report Date	PURPOSE
03/24/14	Amendment--Change in building design
06/13/13	Original Underwriting Report

**ALLOCATION**

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (Annual)	\$1,238,974				\$1,238,974				

**CONDITIONS STATUS**

- Receipt and acceptance by Carryover:
  - Execution of a 15 year contract for 22 vouchers with the Fort Worth Housing Authority (FWHA).  
**Status:** Executive Director of FWHA provided a letter on September 12, 2013, stating that the HA is prepared to execute a 15 yr agreement for 22 vouchers.
- Should any terms of the proposed capital structure change, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**ANALYSIS**

Applicant was required to make significant design changes after the City of Fort Worth's fire marshal requested that the one building design be revised to create three buildings separated by open-air breezeways. This reduced the amount of interior corridors and necessitated an additional elevator. Applicant also chose to reduce the square footage of common area amenities by 2500 square feet and the amount of storage room space by 4500 square feet. There was no fee charged for the storage rooms so there is no impact on the operating income. Also, the Applicant does not intend to modify the number of units, alter the bedroom mix, change the scope of tenant services or reduce the square footage of the units.

**Operating Pro Forma**

There are no changes to the operating pro forma as a result of design changes and eliminating carports.

**Development Cost**

Applicant's changes resulted in a reduction of approximately \$900k in REA estimated building costs. Whereas, the building costs estimated by the UW were \$400k higher in the initial underwriting, estimates resulting from design changes are \$500k lower than Applicant's costs.

**Sources of Funds**

There are no changes to the sources and uses as a result of design changes.

Applicant stated that design changes did not effect building costs. Underwriter estimated that costs decreased, however, overall costs remain within 5% of TDHCA's estimate. Therefore, the UW recommends that applicant's costs continue to be used to determine feasibility.

Underwriter: Eric Weiner  
 Manager of Real Estate Analysis: Thomas Cavanagh  
 Director of Real Estate Analysis: Brent Stewart



Attorneys & Counselors

600 Congress Avenue, Suite 2200  
Austin, Texas 78701-3055  
Telephone: 512-305-4700  
Fax: 512-305-4800  
www.lockelord.com

Richard D. Morrow  
Direct Telephone: 512-305-4709  
Direct Fax: 512-391-4709  
rmorrow@lockelord.com

February 24, 2014

**VIA E.MAIL**

Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701  
Attention: Raquel Morales

Re: **Request to Amend Tax Credit Application**  
Reserve at McAlister, Fort Worth, Tarrant County, Texas  
TDHCA No. 13102

Dear Raquel:

We represent Reserve at McAlister Senior Living, LLC ("**Developer**"), in connection with Reserve at McAlister (the "**Development**"). Developer received an allocation of low-income housing tax credits in the 2013 allocation round. We are submitting this to you on Developer's behalf to request the following two (2) amendments to Developer's tax credit application:

**Amendment Request 1:** Adjust the number and location of the buildings, as well as the size of the common area.

**Amendment Request 2:** Adjust the size and floor plan of the clubhouse.

**Description of Amendment Request 1**

1. The site plan submitted with Developer's tax credit application is attached as Exhibit A (the "**Application Site Plan**").
2. The amended site plan is attached as Exhibit B (the "**Revised Site Plan**").
3. The changes to the site plan resulted from (a) the fire marshal's request that the 1-building design be revised to create three (3) buildings separated by open-air breezeways; (b) the need to reposition the northern building to accommodate the new breezeway and, based on additional topographic work as well as a regional drainage analysis that was not available at the

time the tax credit application was submitted, ensure the most effective off-site and on-site drainage, and (c) a change to the number of parking spaces to be consistent with the number of spaces that is appropriate for a Seniors project, as opposed to a Family project, which results in more open space, which the City prefers. A copy of the Fort Worth Commercial Board of Adjustment Agenda at which the variance was approved is attached as Exhibit C (the Minutes and the formal variance approval letter are not yet available).

4. Changing the building mix from one building to three buildings decreased the common area from 9,425 sq. ft. to 6,881 sq. ft., but did not affect the net rentable square feet.

5. The revisions to the Application Site Plan are necessary to ensure the proper and most effective design of the Development and were unforeseeable as the conditions necessitating the revisions were only discovered after the submission of the tax credit application following further due diligence and working with the City.

### **Impact of Amendment Request 1**

1. The amendment does not (a) materially alter the Development approved by TDHCA, (b) alter any item that received points, or (b) significantly affect the most recent underwriting analysis submitted to TDHCA.

2. The amendment benefits the Development as the Revised Site Plan results in (a) a more effective layout conducive to proper drainage, (b) satisfies the City's request that the breezeways be added, and (c) provides appropriate parking that meets the QAP/Rules parking requirements for a Qualified Elderly project (there are 144 spaces for 124 units), while adding additional open space.

3. The amendment does not significantly change the Application Site Plan as the Revised Site Plan contains essentially the same structures as originally planned, nor does it modify the number of units or the bedroom mix; modify the scope of tenant services; reduce the square footage of the units; significantly modify the architectural design of the Development; increase or decrease the acreage of the original site; or exclude any of the requirements referenced in Section 50.13(b)(4)(G) of the 2013 QAP/Rules.

### **Description of Amendment Request 2**

1. The clubhouse floor plan that was submitted with the tax credit application is attached as Exhibit D (the "**Original Application Clubhouse Plan**"). It incorrectly measures the aggregate square feet to be 11,250 square feet (3,750 sq. ft. on each of the three floors). This was incorrect as the common area located on the second and third floors should have been shown as 1,108 sq. ft. and 2,875 sq. ft. respectively, for a total of 9,425 sq. ft. as shown on Exhibit E attached hereto (the "**Corrected Application Clubhouse Plan**"), which is the total that appears in the TDHCA Real Estate Analysis Report.

2. The revised 6,881 sq. ft. square foot clubhouse floor plan is attached hereto as Exhibit F (the "**Revised Clubhouse Plan**").

3. When reconfiguring the 3-building layout of the Development, it was determined that changing the arrangement and uses of particular rooms in the Clubhouse would improve the marketability of the Development -- for instance, a salon was added. The points that could be

taken under the QAP/Rules for the Application Clubhouse Plan, as well as the Revised Clubhouse Plan, both exceed the number of points Developer took in its tax credit application.

**Impact of Amendment Request 2**

1. The amendment does not (a) materially alter the Development approved by TDHCA, (b) alter the points taken for any item that received points, or (b) significantly affect the most recent underwriting analysis submitted to TDHCA.

2. The amendment benefits the Development as the Revised Clubhouse Plan provides for a more effective layout that is better suited for the target tenants.

3. Although the amendment will decrease the size of the common area/clubhouse, it does not modify the number of units or the bedroom mix; modify the scope of tenant services; reduce the square footage of the units; significantly modify the architectural design of the Development; increase or decrease the acreage of the original site; or exclude any of the requirements referenced in Section 50.13(b)(4)(G) of the 2013 QAP/Rules.

**Conclusion**

Developer believes that the requested amendments will result in a design that more effectively accounts for the Development's location and topography, meets the City's requests, and remains true to the tax credit application by providing the amenities sought by Senior tenants.

In light of the foregoing, Developer respectfully requests TDHCA's approval to amend its tax credit application by (a) replacing the Application Site Plan with the Revised Site Plan; and (b) replacing the Application Clubhouse Plan with the Revised Clubhouse Plan.

A check in the amount of \$2,500.00 is enclosed for payment of the amendment fee. We anticipate that the amendment can be approved administratively and that the amendment fee will be returned to Owner; however, if it requires Board approval, please contact me and include it for consideration at the next Board meeting. Please also contact me if you need any additional information.

Thank you for your time and attention to this matter.

Sincerely,



Richard D. Morrow

cc: Chris Applequist (*via e.mail*)  
Brian McGeady (*via e.mail*)

**EXHIBIT A**

**Application Site Plan**

M.K.&T. RAILROAD  
(AVAILABLE WIDTH ROW)

14.526 ACRES  
F.M. 1187 PARTNERS L.P.  
TRACT 2  
DOC#D204059680  
D.R.T.C.T.

PATONE DRIVE  
(60' WIDTH ROW)

McALISTER ROAD  
(AVAILABLE WIDTH ROW)

SITE ACREAGE  
7.39 ACRES

McALISTER ROAD  
(60' WIDTH ROW PROPOSED)

**RESERVE AT McALISTER**  
FORT WORTH, TX - RESERVE AT McALISTER SENIOR LIVING, LLC

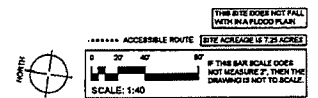
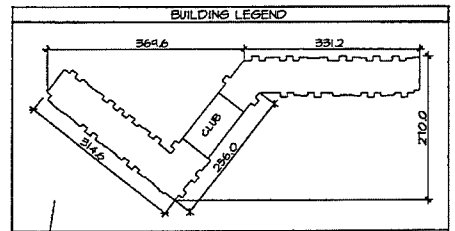
UNIT TABULATIONS  
(A1 = 1 BEDROOM UNIT, B1 = 2 BEDROOM UNIT)

FLOOR	A1	B1	TOTAL
1	30	20	50
2	30	22	52
3	25	22	47
TOTAL	85	64	149

SQUARE FOOTAGES  
A1 UNIT = 746 SF  
B1 UNIT = 876 SF

PARKING REQUIRED (EOD):  
1 space per bedroom  
1 space per 250sf of common area  
208 spaces

PARKING PROVIDED:  
217 standard parking spaces (including 6 Accessible Spaces)  
20 Compact Spaces (including 3 Accessible Spaces)  
247 total Spaces (including 9 Accessible Spaces)



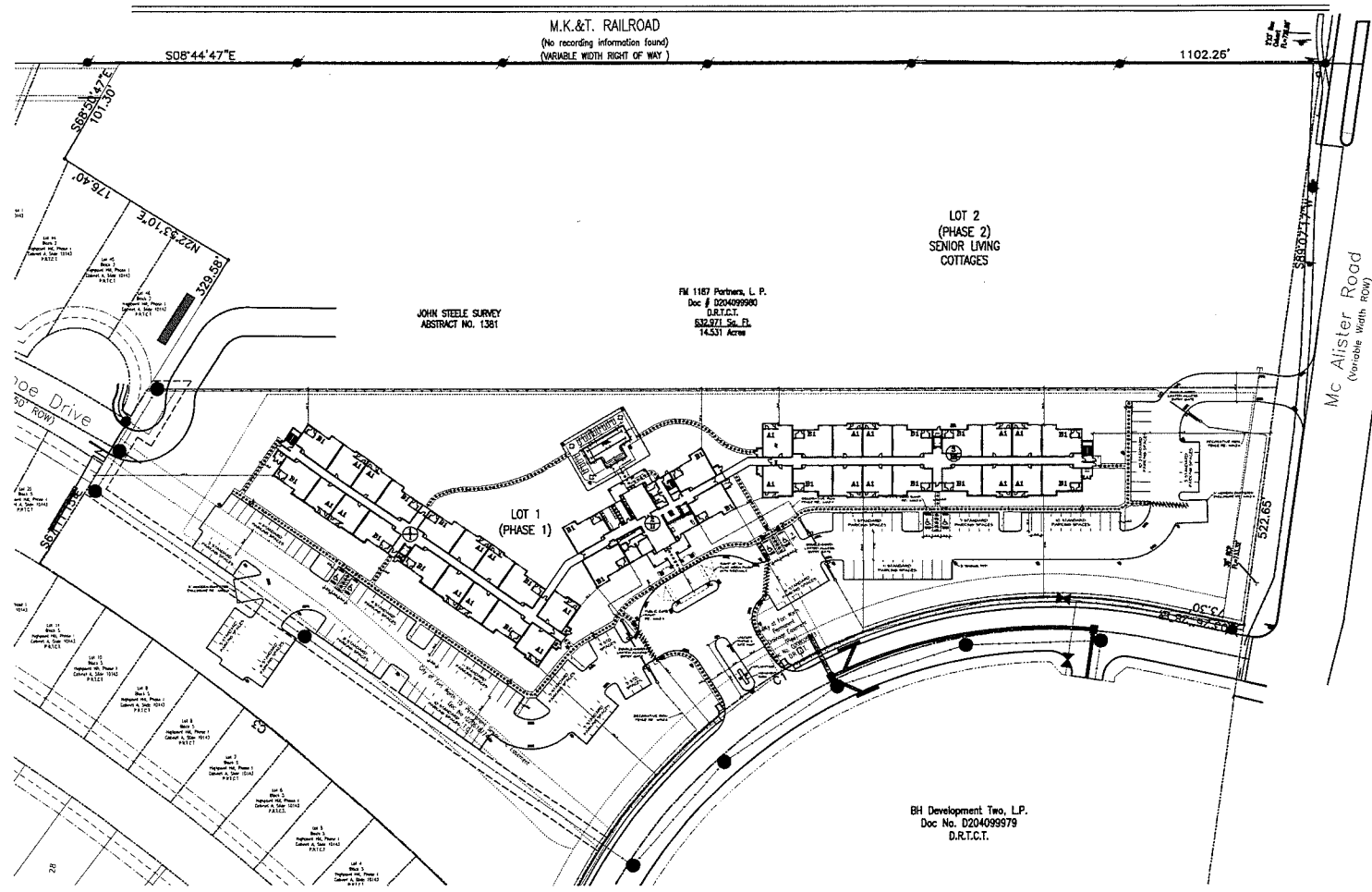
**KELLY GROSSMAN**  
ARCHITECTS, L.L.C.  
PH: 817.494.8470 FAX: 817.494.1544 WWW: www.kellygrossman.com

SITE PLAN

**EXHIBIT B**

**Revised Site Plan**





M.K.&T. RAILROAD  
 (No recording information found)  
 (VARIABLE WIDTH RIGHT OF WAY)

LOT 2  
 (PHASE 2)  
 SENIOR LIVING  
 COTTAGES

JOHN STEELE SURVEY  
 ABSTRACT NO. 1361

FM 1187 Fort Worth, L.P.  
 Doc # D20499980  
 D.R.T.C.T.  
 632,921 SQ. FT.  
 14.531 Acres

LOT 1  
 (PHASE 1)

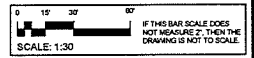
BH Development Two, L.P.  
 Doc No. D204098979  
 D.R.T.C.T.

McAlister Road  
 (Variable Width ROW)

Joe Drive  
 50' ROW

1 BEDROOM UNITS	60 UNITS, 746 SQ. FT. PER UNIT
2 BEDROOM UNITS	84 UNITS, 870 SQ. FT. PER UNIT
NET RENTABLE AREA	192,440 SQ. FT.
CORRIDOR AREA	20,322 SQ. FT.
COMMON AREA	8,851 SQ. FT.
PARKING PROVIDED	144 SPACES

..... ACCESSIBLE ROUTE



# RESERVE AT MCALISTER

RESERVE AT MCALISTER SENIOR LIVING, LLC - FORT WORTH, TX

ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION  
**KELLY GROSSMAN**  
 ARCHITECTS, L.L.C.

3614 MCCOY ROAD, SUITE 210, AUSTIN, TEXAS 78744 PH: 714.0727.3388

SITE PLAN

**EXHIBIT C**

**Parking -- Fort Worth Commercial Board of Adjustment Agenda**

I, the undersigned authority do hereby certify that this Notice of Meeting was posted on the bulletin board, at the City Hall of the City of Fort Worth, Texas, a place convenient and readily accessible to the general public at all times and said Notice was posted on the following date and time Wednesday, February 12, 2014 at 3:00 p.m. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

*Mary J. Kayser*

City Secretary for the City of Fort Worth, Texas



**COMMERCIAL BOARD OF ADJUSTMENT**

**AGENDA**

**Wednesday, February 19, 2014  
10:00 AM**

**1000 Throckmorton  
City Council Chamber  
2<sup>nd</sup> Floor – City Hall**

**Fort Worth, Texas 76102**

**For More Docket Information Visit:**

**<http://fortworthtexas.gov/boards/planninganddevelopment/>**

**BOARD MEMBERS:**

Dan Moore	_____
Robert Gutierrez	_____
Gene Miers	_____
Vacant	_____
John Tunmire	_____
Michael Wellbaum, Chair	_____
James Hill	_____
Lee Echols	_____
Marlene Beckman, Vice Chair	_____

- I. 9:00 A.M.      **WORK SESSION**      **Pre-Council Chamber**
  - A. Review of Cases on Today's Agenda
  
- II. 10:00 A.M.      **PUBLIC HEARING**      **Council Chamber**
  - A. Approval of Minutes of the January 15, 2014 Hearing      \_\_\_\_\_
  - B. Cases on Today's Agenda
  - C. MEETING WILL ADJOURN AT 12:30 PM (ANY CASES NOT HEARD WILL BE MOVED TO March 19, 2014)



**D. New Cases**

1. **BAC-14-010**                    **Fort Worth Academy by Hannfeld Hoffer Stanford-Derek Jamison**  
7301 Dutch Branch Road
  - a. Request a **VARIANCE** in an "R1" Zero Lot Line/Cluster District to permit the construction of an un-illuminated monument sign seven (7) feet four (4) inches in height that exceeds the maximum height of six (6) feet by one (1) feet four (4) inches.
  - b. Request a **VARIANCE** in an "R1" Zero Lot Line/Cluster District to permit the construction of an un-illuminated monument sign one hundred eighty-three (183) square feet in area that exceeds the maximum area of thirty (30) square feet by one hundred fifty-three (153) square feet.
2. **BAC-14-011**                    **Brazos Electric Power Cooperative, Inc by Dunnaway Associates, LP**  
8463 Old Denton Road
  - a. Request a **SPECIAL EXCEPTION** in "PD 996" Planned Development 996 District for Specific Uses, based on the "E" Neighborhood Commercial District, to permit the construction of a telecommunications tower for use by Brazos Electric Power Cooperative.
  - b. Request a **VARIANCE** in a "PD 996" Planned Development 996 District for Specific Uses, based on the "E" Neighborhood Commercial District, to permit the construction of various electric substation-equipment up to ninety (90)-feet in height that exceeds the maximum height of forty-five (45) feet by forty-five (45) feet.
3. **BAC-14-012**                    **FM 1187 PARTNERS LP by Reserve at McAlister Senior Living LLC –**  
**Josh Pettijohn**  
201 McAlister Road
  - a. Request a **VARIANCE** in a "C" Medium Density Multifamily District to permit the construction of a multifamily development that provides one hundred forty-four (144) parking spaces, whereas two hundred eight (208) spaces are required, deficient by sixty-four (64) parking spaces.
4. **BAC-14-013**                    **Juan Rodriguez by Jose Rodriguez**  
2250 Cunningham Road
  - a. Request a **SPECIAL EXCEPTION** in a "J" Medium Industrial District to permit the continued operation of non-accessory outdoor storage of ten (10) vehicles for five (5) years.
  - b. Request a **VARIANCE** in a "J" Medium Industrial District to permit the continued operation of non-accessory outdoor storage in the front yard setback.
5. **BAC-14-014**                    **Renee & Cristina Angulo by Juana Flores**  
4245 Enchanted Rock Lane
  - a. Request a **SPECIAL EXCEPTION** in an "A-5" One-Family District to permit the operation of a daycare facility for up to twelve (12) children for five (5) years.
  - b. Request a **VARIANCE** in an "A-5" One-Family District to permit the operation of a daycare facility without providing the required three (3) parking spaces.



6. **BAC-14-015**                    **AGT Enterprises, LLC by Ray Oujesky**  
3800 Camp Bowie Boulevard
- a. Request a **VARIANCE** in an "ER" Neighborhood Commercial Restricted District to permit the construction of a building encroaching approximately two (2) feet into the required twenty (20) foot front yard setback, creating an approximate eighteen (18) foot yard.
  - b. Request a **VARIANCE** in an "ER" Neighborhood Commercial Restricted District to permit the construction of a building and covered parking structures that total six thousand six hundred and sixty-eight (6,668) square feet (34%) exceeding the maximum 30% lot coverage by one thousand one hundred and three (1,103) square feet.
  - c. Request a **VARIANCE** in an "ER" Neighborhood Commercial Restricted District to reduce the number of required parking spaces with twenty-four (24) parking spaces provided where twenty-five (25) parking spaces are required, deficient by one (1) space.
  - d. Request a **VARIANCE** in an "ER" Neighborhood Commercial Restricted District to permit the construction of covered parking structures encroaching fifteen (15) feet into the required twenty (20) foot supplemental setback, creating an approximate five (5) foot supplemental setback from a residential district along the north property line and the west property line.
7. **BAC-14-016**                    **Oxford Villas, Inc by MJ Thomas Engineering**  
9090 Stone Park Drive
- a. Request a **VARIANCE** in a "C" Medium Density Multifamily District to permit the construction of an open-design fence along the western property line.
8. **BAC-14-017**                    **CITY OF FORT WORTH by the Emergency Management Office**  
5801 Boat Club Road
- a. Request a **VARIANCE** in an "E" Neighborhood Commercial District to permit the construction of a weather radar tower approximately sixty-one (61) feet in height where only forty-five (45) feet is allowed, excessive by sixteen (16) feet.
  - b. Request a **VARIANCE** in an "E" Neighborhood Commercial District to permit the construction of a weather radar tower that is approximately four hundred feet (400) feet from a one-family district, deficient by one hundred (100) feet.

### III. ADJOURNMENT:

#### **ASSISTANCE AT THE PUBLIC MEETINGS:**

Fort Worth City Hall is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need accommodations, auxiliary aids, or services such as interpreters, readers, or large print are requested to contact the City's ADA Coordinator at (817) 392-8552 or e-mail [ADA@FortWorthTexas.gov](mailto:ADA@FortWorthTexas.gov) at least 48 hours prior to the meeting so that appropriate arrangements can be made. If the City does not receive notification at least 48 hours prior to the meeting, the City will make a reasonable attempt to provide the necessary accommodations.

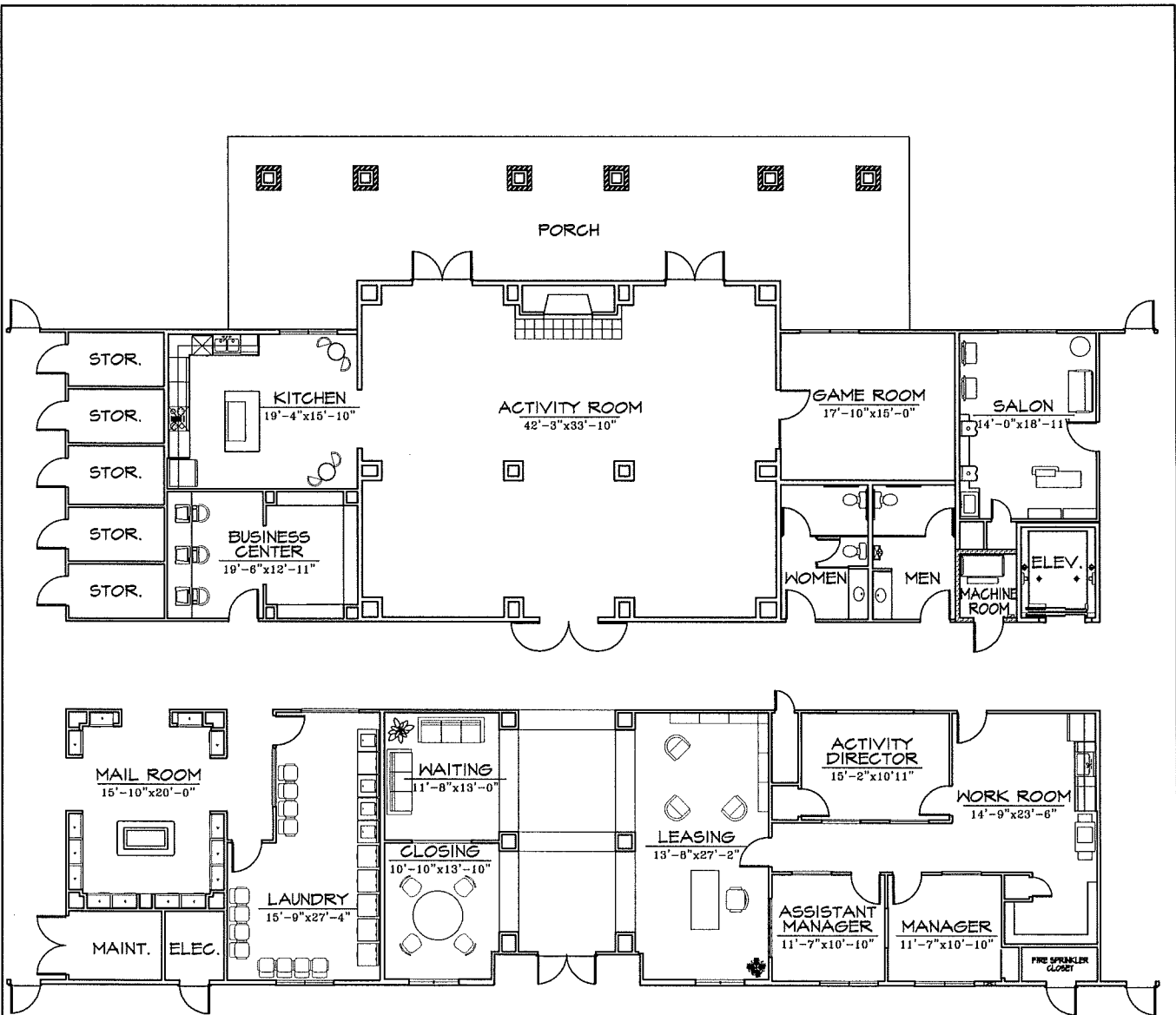
El Edificio Municipal de la Ciudad de Fort Worth, o City Hall, tiene acceso para silla de ruedas. Se solicita a las personas que planean asistir a esta reunión y que necesitan ayudas auxiliares o servicios de intérpretes, lectores o impresiones con letra grande, que se comuniquen con el Coordinador de la Asociación Americana de Discapacitados (ADA) de la Ciudad llamando al teléfono (817) 392-8552; o por correo electrónico a [ADA@FortWorthTexas.gov](mailto:ADA@FortWorthTexas.gov) por lo menos 48 horas antes de la reunión para que se puedan hacer los arreglos adecuados. Si la Municipalidad no recibe una notificación por lo menos 48 horas antes de la reunión, ésta hará un intento razonable para proporcionar los servicios auxiliares necesarios.

#### **Executive Session.**

A closed Executive Session may be held with respect to any posted agenda item to enable the Commission to receive advice from legal counsel, pursuant to Texas Government Code, Section 551.071.

**EXHIBIT D**

**Original Application Clubhouse Plan**



# CLUBHOUSE 1ST FLOOR PLAN

3,750 SQ. FT.

1/16"

## RESERVE AT MCALISTER

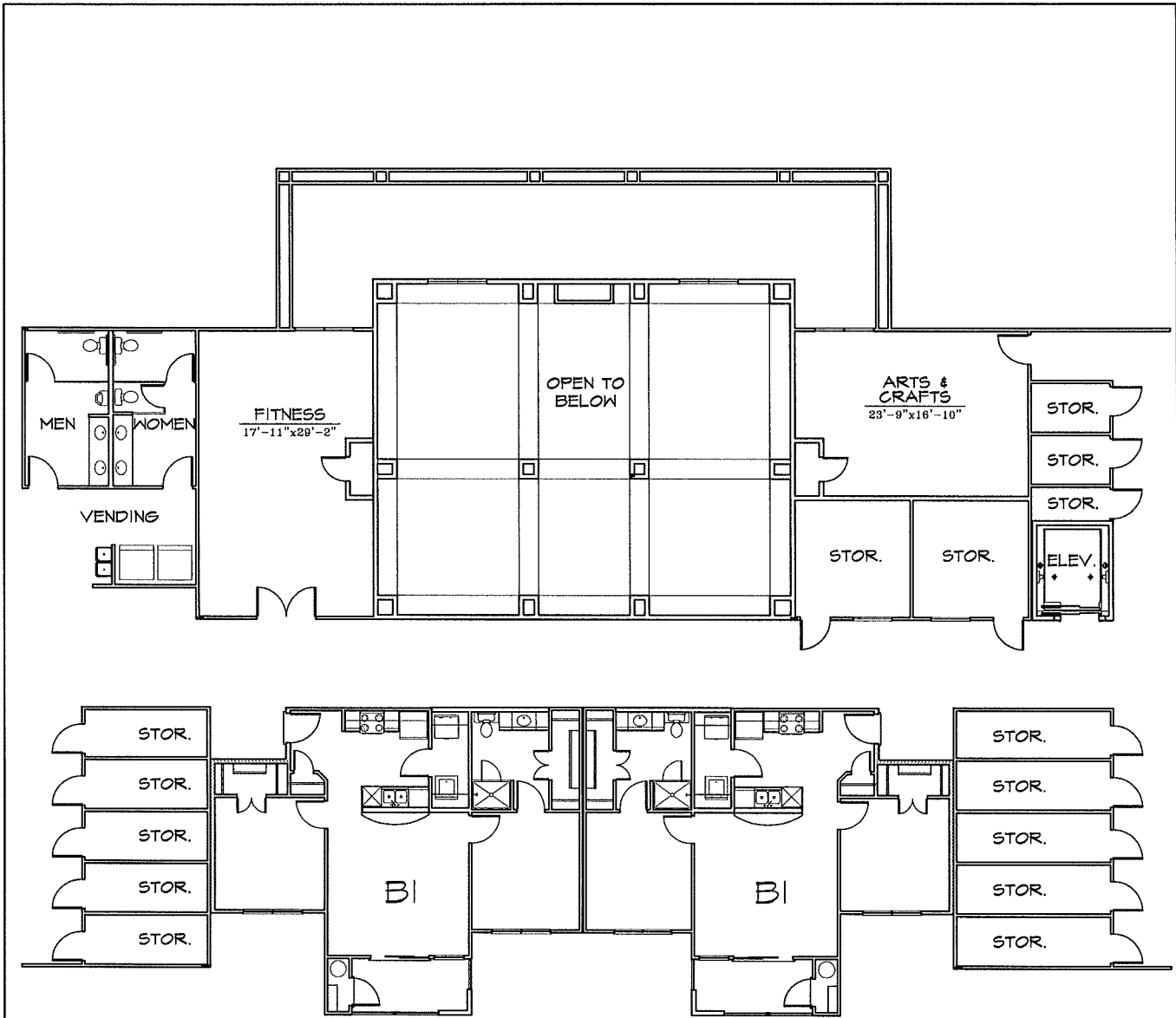
Ft. Worth, Texas

RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

**KELLY GROSSMAN**  
ARCHITECTS, L L C

280 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78748 ph: +1.512/327.3397



# CLUBHOUSE 2ND FLOOR PLAN

3,750 SQ. FT.

1/16"

## RESERVE AT MCALISTER

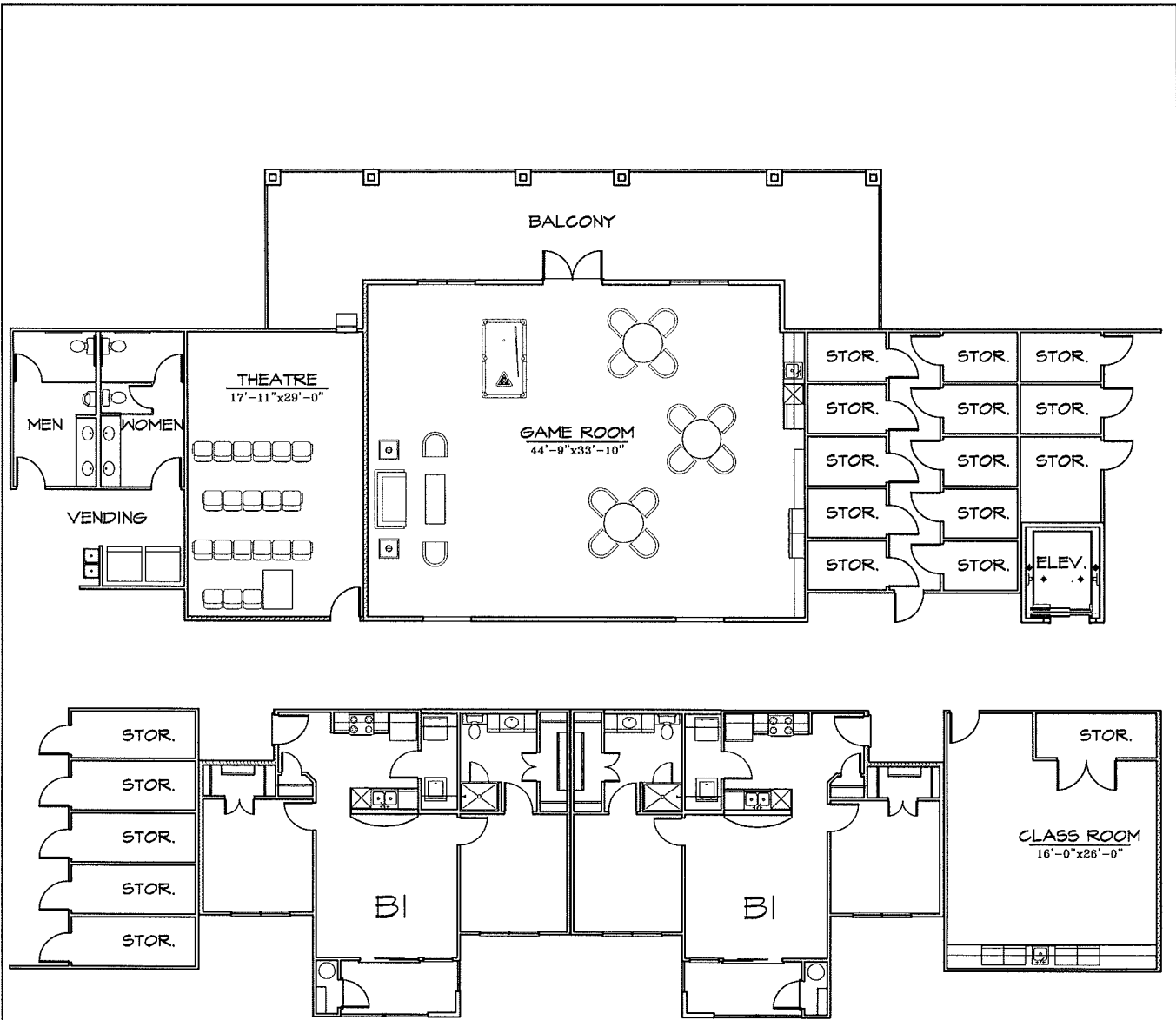
Ft. Worth, Texas  
RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

**KELLY GROSSMAN**  
ARCHITECTS, LLC

280 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78748 ph: +1.512.327.3397





# CLUBHOUSE 3RD FLOOR PLAN

3,750 SQ. FT.

1/16"

## RESERVE AT MCALISTER

Ft. Worth, Texas

RESERVE AT MCALISTER SENIOR LIVING, LLC

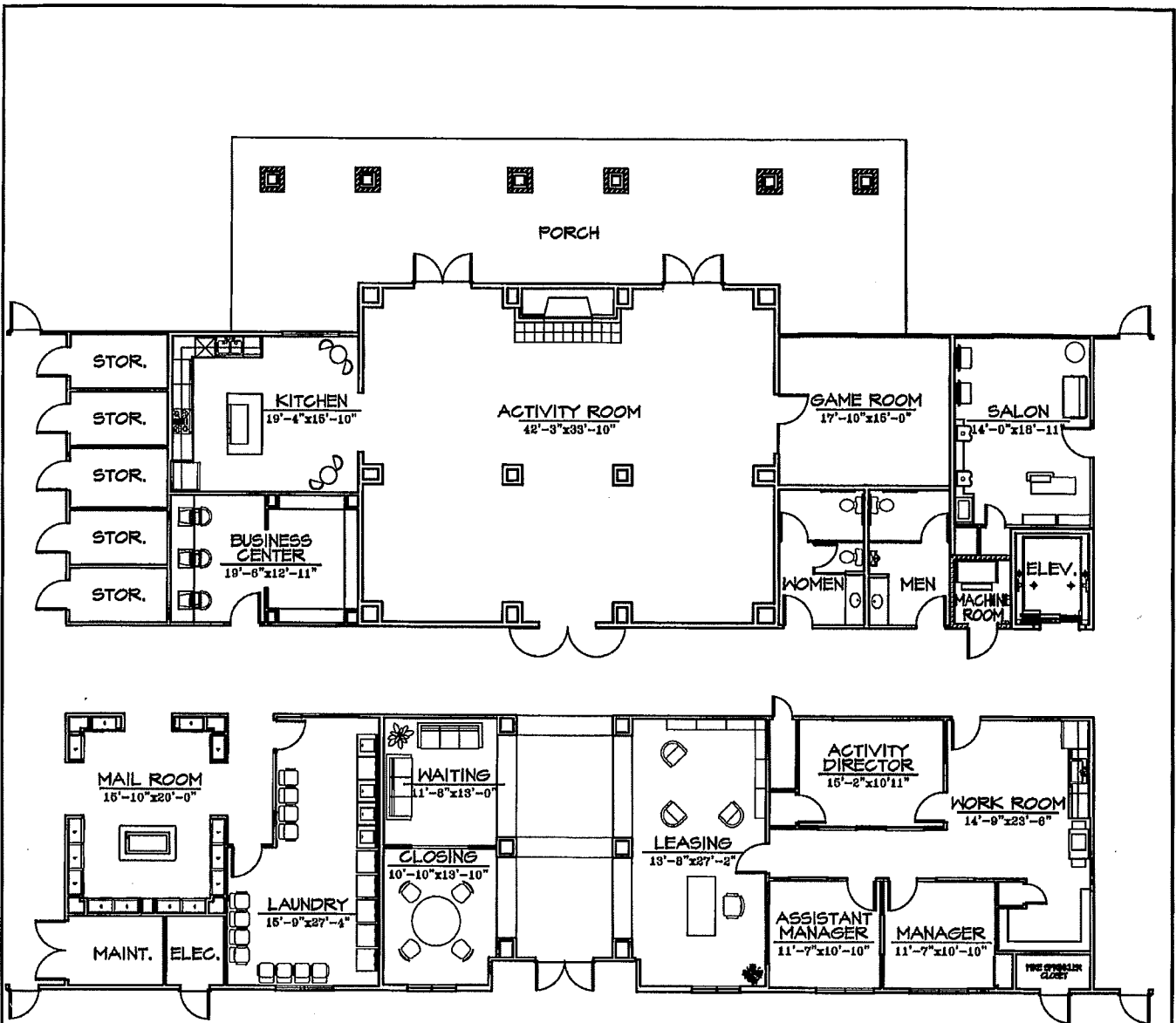
• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

**KELLY GROSSMAN**  
ARCHITECTS, LLC

260 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78746 ph: +1.512/327.3387

**EXHIBIT E**

**Corrected Application Clubhouse Plan**



# CLUBHOUSE 1ST FLOOR PLAN

5442 SQ. FT.

1/16"

## RESERVE AT MCALISTER

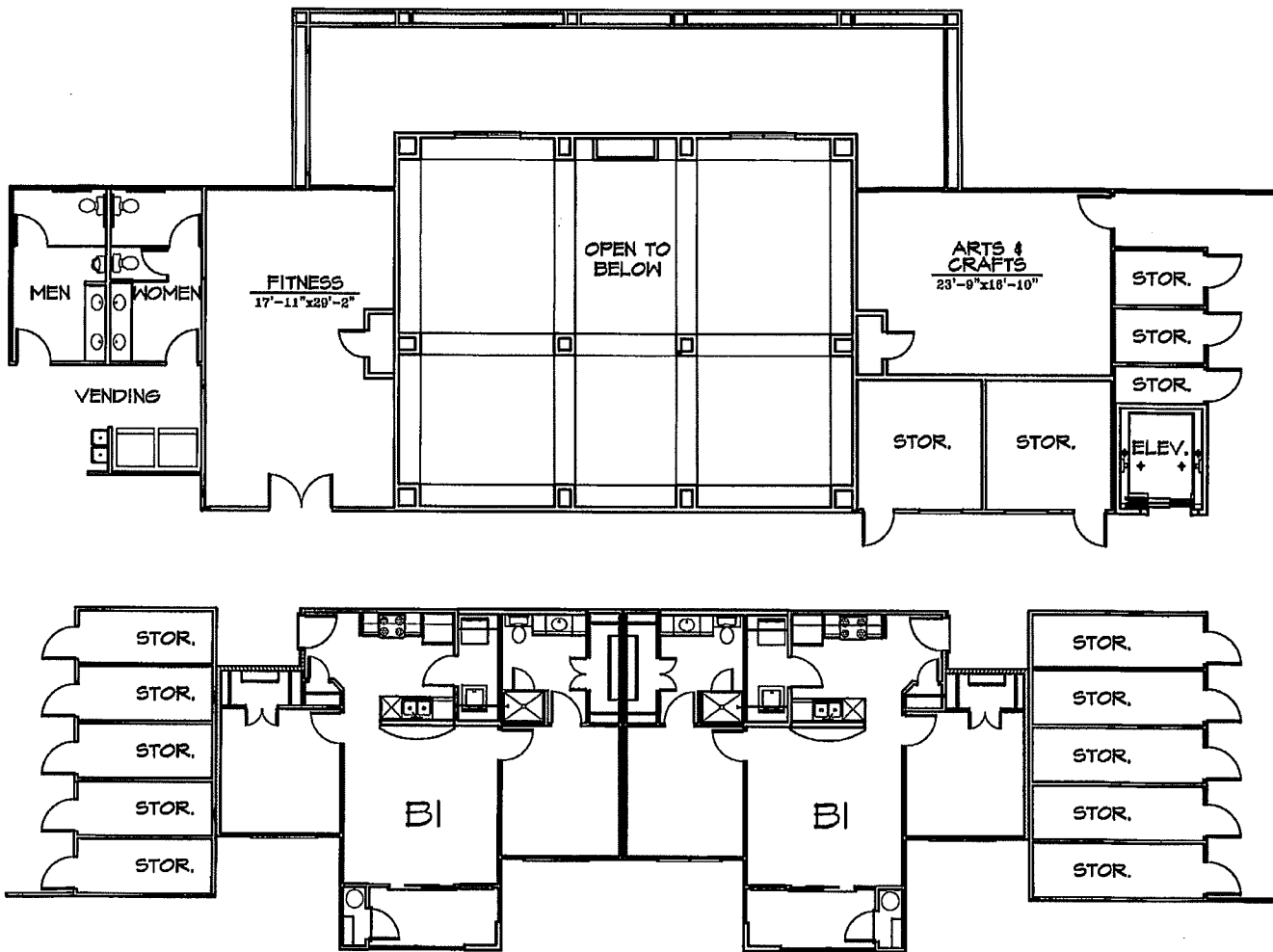
Ft. Worth, Texas

RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

**KELLY GROSSMAN**  
ARCHITECTS, L.L.C.

280 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78746 ph: +1.512/327.3397



# CLUBHOUSE 2ND FLOOR PLAN

.1108 SQ. FT.

1/16"

## RESERVE AT MCALISTER

Ft. Worth, Texas

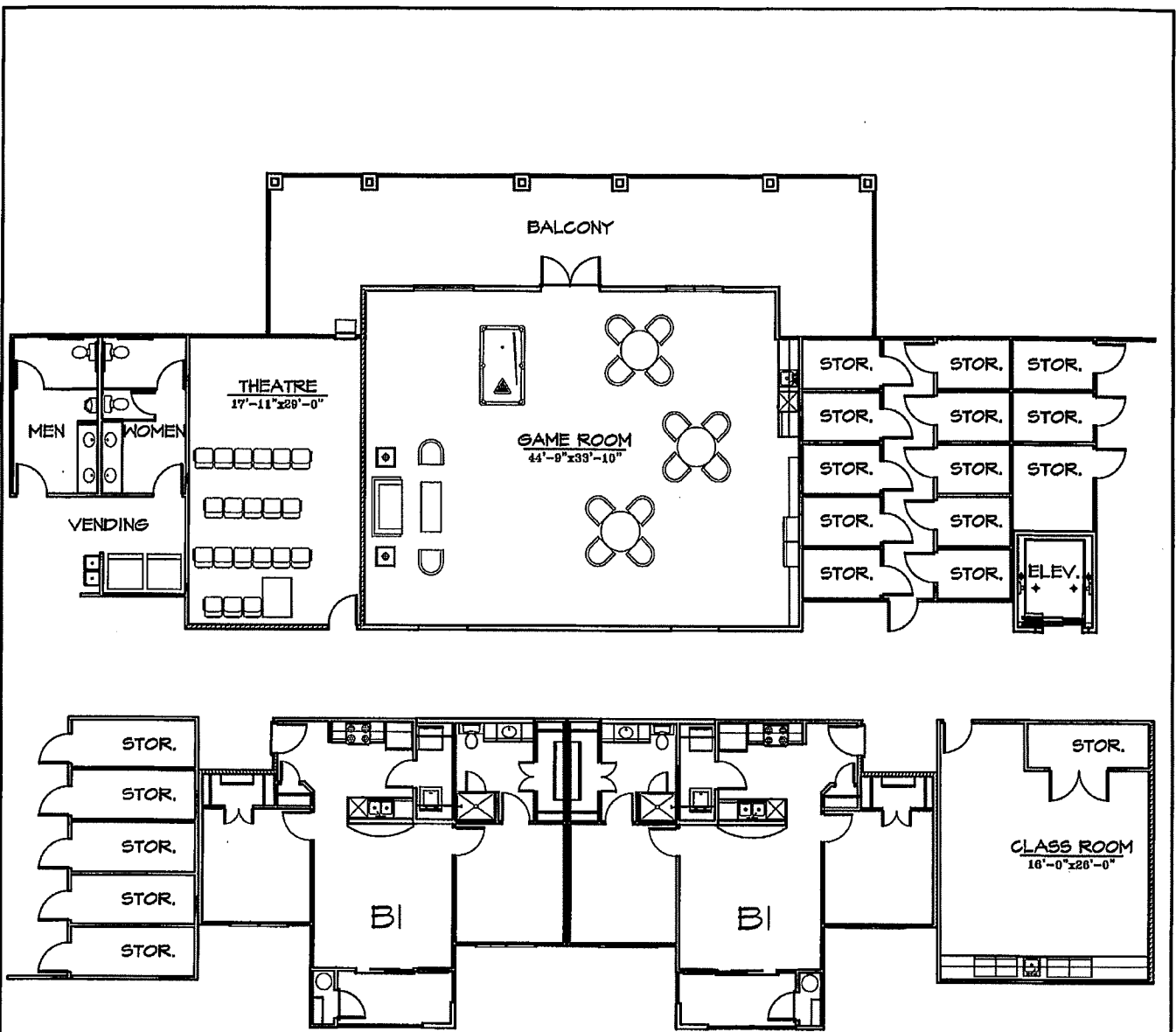
RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

# KELLY GROSSMAN

A R C H I T E C T S , L L C

280 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78748 ph: +1.512.327.3397



# CLUBHOUSE 3RD FLOOR PLAN

2875 SQ. FT.

1/16"

## RESERVE AT MCALISTER

Ft. Worth, Texas

RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

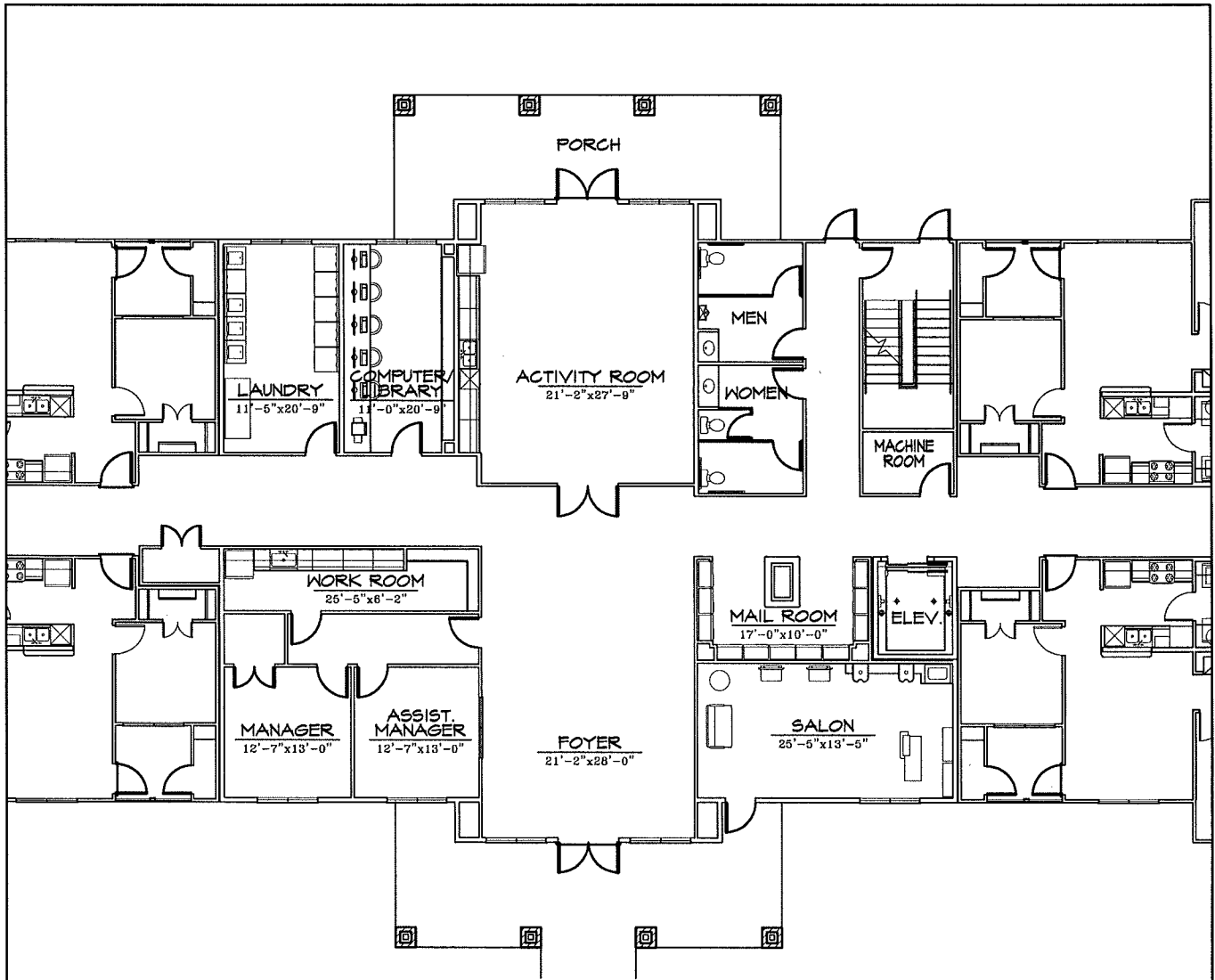
# KELLY GROSSMAN

ARCHITECTS, L.L.C.

280 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78748 ph: +1.512.327.3397

**EXHIBIT F**

**Revised Clubhouse Plan**



# CLUBHOUSE 1ST FLOOR PLAN

3,815 SQ. FT.

1/16"

## RESERVE AT MCALISTER

Ft. Worth, Texas

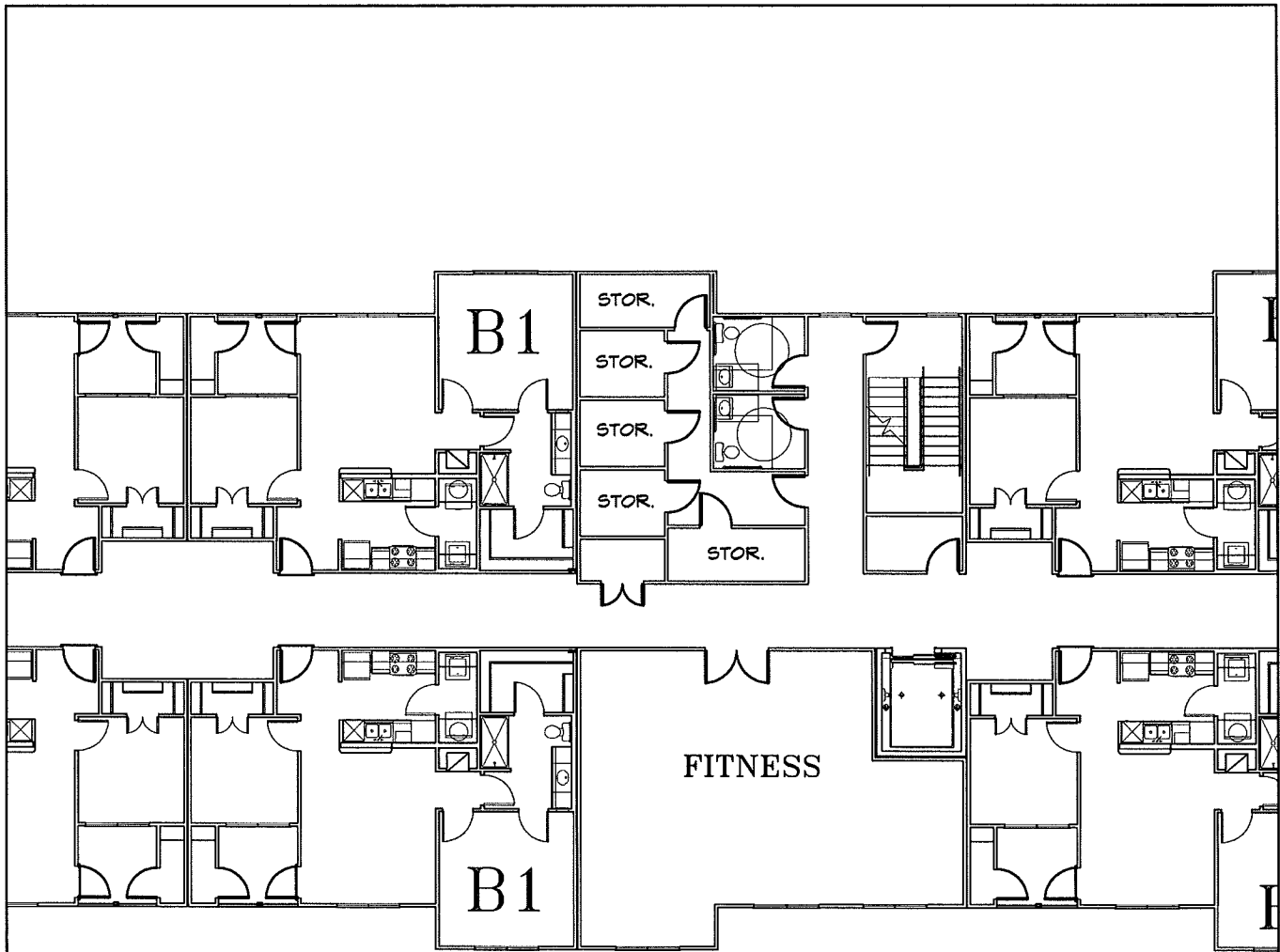
RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

# KELLY GROSSMAN

A R C H I T E C T S , L L C

260 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78746 ph: +1.512/327.3397



# CLUBHOUSE 2ND FLOOR PLAN

1,533 SQ. FT.

1/16"

## RESERVE AT MCALISTER

Ft. Worth, Texas

RESERVE AT MCALISTER SENIOR LIVING, LLC

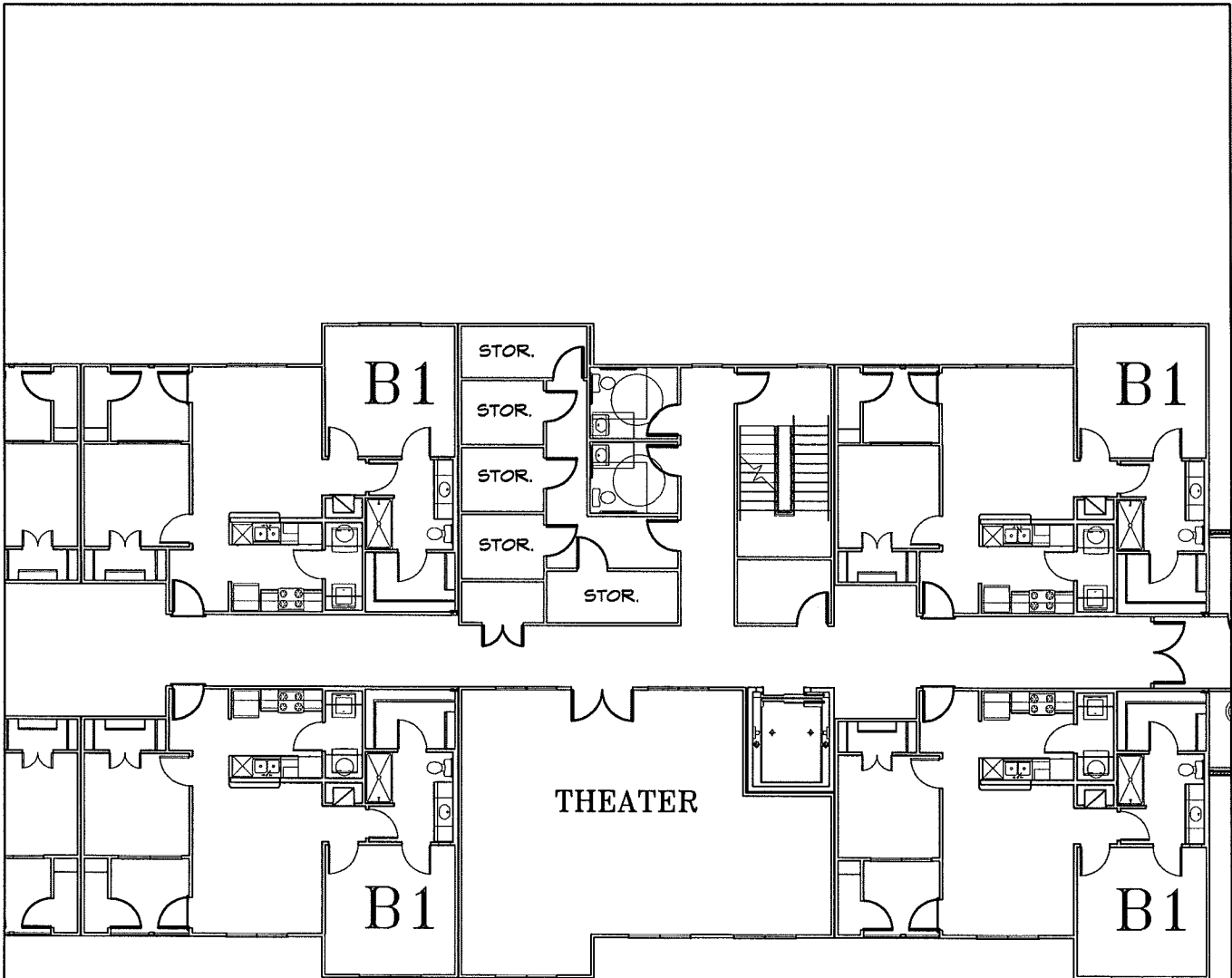
• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

### KELLY GROSSMAN

A R C H I T E C T S , L L C

260 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78746 ph: +1.512/327.3397





# CLUBHOUSE 3RD FLOOR PLAN

1,533 SQ. FT.

1/16"

## RESERVE AT MCALISTER

Ft. Worth, Texas  
RESERVE AT MCALISTER SENIOR LIVING, LLC

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

**KELLY GROSSMAN**  
A R C H I T E C T S , L L C

260 ADDIE ROY ROAD, SUITE 210 AUSTIN, TEXAS 78746 ph: +1.512/327.3397

1j

**BOARD ACTION REQUEST**

**LEGAL SERVICES**

**MAY 8, 2014**

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Avalon Apartments (HTC# 91036)

**RECOMMENDED ACTION**

**WHEREAS**, Avalon Apartments in Arlington, Tarrant County, owned by Avalon Apartments, LLC (“Avalon”), has a history of uncorrected violations of the applicable land use restriction agreement (“LURA”);

**WHEREAS**, on February 28, 2012, representatives of Avalon met with the TDHCA Administrative Penalty Committee and agreed to correct all outstanding violations on or before May 31, 2012;

**WHEREAS**, on April 4, 2012, the TDHCA Administrative Penalty Committee unanimously agreed to extend the final deadline to June 31, 2012, due to a natural disaster in Arlington, Texas;

**WHEREAS**, on May 10, 2012, the TDHCA Governing Board approved an Agreed Final Order calling for a fully probated administrative penalty in the amount of \$5,000.00, all of which was to be deferred and forgiven provided that all violations were resolved as required by the Agreed Final Order;

**WHEREAS**, Avalon violated the Agreed Final Order and demand was made for the full \$5,000.00 administrative penalty;

**WHEREAS**, Avalon failed to submit payment and was referred to the Office of the Attorney General for collection, where a payment plan was negotiated;

**WHEREAS**, a new onsite review was conducted on July 25, 2012, and a 90-day corrective action deadline was set to address new violations of the LURA;

**WHEREAS**, Avalon was referred back to the Administrative Penalty Committee for the new uncorrected violations of the LURA;

**WHEREAS**, new administrative penalties may be sought for violations cited under the Agreed Final Order from 2012 that continue uncorrected;

**WHEREAS**, on March 25, 2014, representatives of Avalon, met again with the TDHCA Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order with the following requirements:

1. Avalon is assessed an additional administrative penalty in the amount of \$10,000.00, which is partially deferred and may be satisfied, in lieu, as indicated below;

2. Avalon shall repair all UPCS violations and submit fully acceptable documentation as indicated in Attachment 1 of the Agreed Final Order on or before August 6, 2014;
3. Avalon shall correct all file monitoring violations and submit fully acceptable documentation as indicated in Attachments 2 and 3 of the Agreed Final Order on or before August 6, 2014;
4. Avalon shall convert unit 234 to residential use and provide evidence of the conversion to TDHCA as indicated at Attachment 2 of the Agreed Final Order on or before August 6, 2014;
5. A \$2,500.00 portion of the administrative penalty shall be deferred and forgiven if Avalon completes the material LURA amendment process regarding the office in unit 121 and submits the necessary \$2,500.00 processing fee, regardless of whether the amendment is approved;
6. If Avalon chooses to convert unit 121 from an office to residential unit instead of submitting a material LURA amendment request, the conversion must be complete and evidence of the conversion must be submitted to TDHCA as indicated at Attachment 2 of the Agreed Final Order on or before August 6, 2014;
7. If Avalon timely and fully complies with the terms and conditions of the Agreed Final Order, a \$2,500.00 portion of the assessed administrative penalty amount shall be deferred and forgiven; and
8. If outstanding violations are not fully resolved and sufficient evidence of the corrections have not been submitted within the established timeline, the full administrative penalty will become due and payable, with any necessary reductions as indicated above.

**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 the Agreed Final Order assessing a \$10,000.00 administrative penalty as outlined above for noncompliance at Avalon Apartments (HTC 91036), substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

### **BACKGROUND**

Avalon is the owner of Avalon Apartments, a 75-unit apartment complex located in Arlington, Tarrant County, which is subject to a Land Use Restriction Agreement ("LURA") signed in 1993 in consideration for an allocation of low income housing tax credits in the total amount of \$857,230.00 awarded by TDHCA. Avalon acquired the property in 2004 and did not receive

prior Department approval, but the LURA remains in effect per Section 2 of the LURA which stipulates that its restrictions run with the land.

Despite numerous attempts by the Compliance Division, Legal Division, and Administrative Penalty Committee to provide technical assistance and obtain acceptable corrective action, Avalon has been unable to operate the property in compliance with LURA requirements and does not respond to monitoring deadlines. Avalon first discussed the property with the Administrative Penalty Committee via teleconference during 2009, after which the Committee voted to refer the property to the Compliance Division for technical support. The property was referred back to the Committee during 2012 and an informal conference was held. The Board subsequently approved an Agreed Final Order calling for an administrative penalty in the amount of \$5,000.00, which was to be fully deferred and forgiven provided that Avalon met the requirements of the Agreed Final Order. Avalon signed the order, but did not fully comply and the \$5,000.00 penalty was declared due and payable, then referred to the Office of the Attorney General for collection.

New violations were referred to the Administrative Penalty Committee for consideration and a second informal conference was held on March 25, 2014. Avalon agreed to pay a maximum penalty of \$10,000.00, to be partially deferred and forgiven as indicated above.

Violations for which satisfactory evidence of corrective action has not been provided include:

1. Violations under the 2012 Agreed Final Order that remain unresolved:
  - i. Failure to document resolution of 2009 UPCS Violations;
  - ii. Failure to make unit 234 ready for occupancy and available for rent;
2. New Violations:
  - i. Failure to make unit 121 ready for occupancy and available for rent;
  - ii. Failure to execute required lease provisions;
  - iii. Failure to submit pre-onsite documentation;
  - iv. Failure to ensure that household incomes are at or below applicable limits upon initial occupancy;
  - v. Failure to execute Annual Eligibility Certification forms;
  - vi. Failure to fully submit 2011 Annual Owners Compliance Report; and
  - vii. Failure to fully submit 2012 Annual Owners Compliance Report.

Consistent with direction from the Department's Administrative Penalty Committee, a partially deferred penalty in the amount of \$10,000.00 is recommended, with the possibility for the deferral and forgiveness of a \$5,000.00 portion provided that Avalon complies with all terms of the Agreed Final Order.

ENFORCEMENT ACTION AGAINST  
AVALON APARTMENTS, L.L.C.  
WITH RESPECT TO AVALON  
APARTMENTS (HTC FILE # 91036)

§  
§  
§  
§  
§

BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 8<sup>th</sup> day of May, 2014, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **AVALON APARTMENTS, L.L.C.**, a Texas limited liability corporation ("AVALON" or "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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

### **FINDINGS OF FACT**

#### **Jurisdiction:**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. In 1991, Texas Avalon, Ltd. ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an total amount of \$857,230.00 to rehabilitate Avalon Apartments ("Property") (HTC file No. 91036 / CMTS No. 954 / LDLD No. 102).
3. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective February 4, 1993, and filed of record at Volume 10941, Page 396 of the Official Public Records of Real Property of Tarrant County, Texas ("Records"). In accordance with Section 2(b) 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.

4. Respondent took ownership of the Property on March 31, 2014 and is subject to the continuing requirements of the LURA.
5. Respondent is a Texas limited liability corporation that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

6. Respondent has a history of violations and previously signed an Agreed Final Order effective May 25, 2012, agreeing to pay a \$5,000 administrative penalty which was to be fully forgivable provided that Respondent complied with all of the following requirements:
  - a. Respondent to attend next available First Thursday Training;
  - b. Respondent to submit work orders for 2009 Uniform Physical Condition Standards ("UPCS") violations on or before May 31, 2012;
  - c. Respondent to make Unit 237 ready for occupancy on or before May 31, 2012;
  - d. Respondent to update all tenant files and ensure that each included completed tenant applications, verifications of all sources of income and assets, tenant income certifications, leases and lease addenda, on or before June 31, 2012 in preparation for an onsite review by the Department. During the onsite review, findings would be addressed as follows:
    - i. If units 117, 137, 234, 237, or 241 were occupied and the file monitor was unable to verify eligibility of all current tenants in those units, this would be considered a violation of the Agreed Final Order;
    - ii. If units 117, 137, 234, 237 or 241 were vacant, the file monitor would verify that the unit(s) were ready for occupancy. If a unit was not ready for occupancy, this would be considered a violation of the 2012 Agreed Final Order.
    - iii. If the file monitor found violations relating to other tenant files that are reviewed, a subsequent 90-day deadline for correcting any new violations would be set. If Avalon did not submit corrective documentation on or before the deadline set by the file monitor, TDHCA reserved the right to assess additional administrative penalties outside of the 2012 Agreed Final Order.

---

<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer 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.

The following violations were not resolved as required by the Agreed Final Order and a penalty demand letter was sent. Respondent failed to submit the required \$5,000 penalty payment on or before the February 21, 2013 deadline. The Department referred the file to the Office of the Attorney General and they negotiated a payment plan with Respondent. The following violations remain unresolved:

- a. Respondent failed to make Unit 234 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair;
  - b. Respondent failed to provide evidence meeting minimum TDHCA guidelines to prove that the following UPCS violations from the July 23, 2009 physical inspection had been resolved, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair;:
    - i. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
    - ii. Units 122, 125, 230 – pest infestations (exterminator invoices required);
    - iii. Units 217 and 230 - range hood filters missing;
    - iv. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress;
7. On August 1, 2012, TDHCA sent notice that Respondent had failed to timely submit their 2011 Annual Owner's Compliance Report, a violation of 10 TEX. ADMIN. CODE §60.105 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.

Parts A and C were submitted on 2/23/2012. Part D was submitted on 7/5/2012. Part B remains outstanding.

8. On July 17, 2012, TDHCA notified Respondent of a regularly scheduled UPCS inspection to be conducted on August 24, 2012. TDHCA attempted to inspect on the scheduled date but Respondent was not present to allow access, so only a limited inspection was performed of the property's exterior. Inspection reports showed numerous property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notices to Owner), as amended, a 90-day corrective action deadline of December 10, 2012 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Acceptable corrective action was received after the corrective action period had expired.



9. An on-site monitoring review was conducted on July 25, 2012, to determine whether Respondent had resolved prior violations of LURA requirements to lease units to low income households and maintain records demonstrating eligibility. As indicated in FOF #8, the file monitor was not able to verify resolution of all prior violations. The review also identified new findings of noncompliance. A monitoring letter was sent on August 15, 2012, but no response was received and the following findings remain uncorrected:

Prior findings that remained unresolved at the time of the review:

- a. Respondent failed to provide evidence meeting minimum TDHCA guidelines to prove that the following UPCS violations from the 2009 physical inspection had been resolved, a violation of 10 TEX. ADMIN. CODE § 60.116 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair.
  - i. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
  - ii. Units 122, 125, 230 – pest infestations (exterminator invoices required);
  - iii. Units 217 and 230 – range hood filters missing;
  - iv. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress;
- b. Respondent failed to make Unit 234 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair.

New findings:

- c. Respondent failed to execute required lease provisions or exclude prohibited lease language for units 129, 132, 227, 115, 117, 110, 137, 237, and 241, a violation of 10 TEX. ADMIN. CODE § 60.110 (Lease Requirements), which requires certain lease language;
- d. Respondent failed to provide pre-onsite documentation, including entrance questionnaire, unit status report, utility allowance, affirmative marketing plan, written leasing criteria (including required deposits and refund policies), written wait list policy, documents supporting application fees or charges; verification of contact information. Failure to submit the documentation is a violation of 10 TEX. ADMIN. CODE §60.115 (Onsite Monitoring), which requires all developments to make all necessary documentation available to the Department;
- e. Respondent failed to make Unit 121 ready for occupancy and available for rent, a violation of the Section 3(g) of the LURA, which requires all of the units to be made available for occupancy, and a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standard) which requires units to be decent, safe, sanitary and in good repair;

- f. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 129, 132, 227, 115, and 110, a violation of 10 TEX. ADMIN. CODE §60.108 (Determination, Documentation and Certification of Annual Income) which outlines how to properly determine household income.
  - g. Respondent failed to provide Annual Eligibility Certifications for units 122, 123, 124, 125, 126, 127, 130, 133, 224, 225, 226, 227, 228, 229, 230, 114, 115, 116, 118, 119, 120, 217, 104, 105, 107, 108, 109, 111, 112, 202, 204, 205, 207, 208, 209, 211, 212, 134, 135, 136, 139, 140, 141, 235, 236, 238, 239, 240, and 241, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification), which requires developments to annually collect an Annual Eligibility Certification form from each household.
10. On July 7, 2013, TDHCA sent notice that Respondent had failed to timely submit their 2012 Annual Owner's Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report.

Parts A and C were submitted on 4/3/2014. Part D was submitted on 4/11/2014. Part B remains outstanding.

11. The following violations remain outstanding at the time of this order:
- a. Unit 234 not available for rent, as described in FOF # 6 and 9b;
  - b. 2009 UPCS Violations described in FOF #6 and 9a;
  - c. 2011 Annual Owners Compliance Report violation described in FOF # 7;
  - d. Lease violations described in FOF # 9c;
  - e. Pre-onsite documentation violations, as described in FOF # 9d;
  - f. Unit 121 not available for rent, as described in FOF # 9e;
  - g. Household income above limit upon initial occupancy, as described in FOF #9f;
  - h. Annual Eligibility Certification violations, as described in FOF 9g;
  - i. 2012 Annual Owners Compliance Report violation described in FOF # 10;

## CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TEX. ADMIN. CODE § 60.116 in 2009, 10 TEX. ADMIN. CODE § 60.118 in 2012, and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
4. Respondent violated Section 3(g) of the LURA and 10 TEX. ADMIN. CODE §60.118 in 2012 by failing to make two units suitable for occupancy and available for rent.
5. Respondent violated 10 TEX. ADMIN. CODE §60.105 in 2012 and 10 TEX. ADMIN. CODE §10.603 in 2013 by failing to submit Annual Owner's Compliance Reports for the years 2011, and 2012, respectively;
6. Respondent violated 10 TEX. ADMIN. CODE §60.110 in 2012 by failing to execute required lease provisions.
7. Respondent violated 10 TEX. ADMIN. CODE §60.115 in 2012 by failing to provide required pre-onsite documentation.
8. Respondent violated representations made on page 1 of the LURA and 10 TEX. ADMIN. CODE §60.108 in 2012 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 5 units.
9. Respondent violated 10 TEX. ADMIN. CODE §60.111 by failing to annually collect Annual Eligibility Certification forms for 49 units.
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
11. 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.
12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 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.

13. An administrative penalty of \$10,000.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 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 \$10,000.00, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall repair all UPCS violations as indicated in Attachment 1 and submit work orders in the correct format, including all necessary parts, to document the corrections to TDHCA on or before August 6, 2014.

**IT IS FURTHER ORDERED** that Respondent shall fully correct all file monitoring violations as indicated in Attachments 2 and 3, and submit full documentation of the corrections to TDHCA on or before August 6, 2014.

**IT IS FURTHER ORDERED** that Respondent shall convert unit 234 to residential use and provide evidence of the conversion to TDHCA as indicated at Attachment 2 on or before August 6, 2014.

**IT IS FURTHER ORDERED** that a \$2,500.00 portion of the administrative penalty shall be deferred and forgiven if owner completes the material LURA amendment process regarding the office in unit 121 and submits the necessary \$2,500.00 processing fee, regardless of whether the amendment is approved;

**IT IS FURTHER ORDERED** that, if Respondent chooses to convert unit 121 from an office to residential unit instead of submitting a material LURA amendment request, the conversion must be complete and evidence of the conversion must be submitted to TDHCA as indicated at Attachment 2 on or before August 6, 2014.

**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 an additional \$2,500.00 portion of the assessed administrative penalty amount, and that this \$2,500.00 portion 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, then the administrative penalty, with any necessary reductions as indicated above, 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

**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>. When 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 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

*[Remainder of page intentionally blank]*



STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_, a notary public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, known to me or proven to me through \_\_\_\_\_ 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 the authorized representative of Respondent, owner of Avalon Apartments, 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 Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**AVALON APARTMENTS, L.L.C.**, Texas limited liability corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

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

## Attachment 1

### UPCS instructions

#### 2009 UPCS Violation List:

1. Building – downspout and gutter joint damaged and leaking, downspouts missing throughout;
2. Units 122, 125, 230 – pest infestations (exterminator invoices required);
3. Units 217 and 230 – range hood filters missing;
4. Unit 230 – health and safety violation for double cylinder deadbolt on entry door preventing egress;

**Instruction:** Each violation indicated above must be fixed and you must prepare and submit sufficient documentation of correction as indicated by the guidelines below via CMTS on or before August 6, 2014.

**Guidelines:** Ideally, a separate work order is created by Building or Unit for deficiencies found in each area. For example, the work order for a single unit may indicate all identified deficiencies listed for that unit if each correction is individually described. However, most developments generate a separate work order for each deficiency to ensure the response is adequately complete and the description of each corrective action is clearly detailed. Five pieces of information are needed on work orders or invoices:

1. The location of the deficiency, i.e. Bldg. 5 Unit 502 or Site- near outside gate, etc.
2. Description of the deficiency, i.e. Damaged Doors, Hardware, locks – Bedroom door won't latch properly. Site-Hazards Other- Broken Glass.
3. How the deficiency was corrected. Just a few quick words are sufficient, i.e. "replaced bedroom door latch" or "adjusted bedroom door latch". "Removed broken glass." "Sheetrock repair, taped, floated, and painted". Conversely, words such as "fixed," "done," "complete" are inadequate and are NOT acceptable.
4. The date the deficiency was corrected. The department requires a correction date in order to accept the documentation. If there is no date of correction listed, the deficiency is not considered corrected.
5. The signature of the person who either performed the repair or acknowledges that the repair was performed satisfactorily. This is very important. Someone must certify that the correction was acceptably completed.

Please submit all of the work orders in the same order that they appear in the list above. This facilitates faster processing and increases the chances that all violations will be fully addressed.

For repairs such as concrete repairs, roofing, etc. where vendors are utilized instead of onsite maintenance staff, please include the scope of work with the dated invoice of the contractor that performed the work.

For pest control, the Structural Pest Control Act (Chapter 1951 of the Occupations Code) requires licensing of businesses and individuals that perform structural pest control for hire. Additionally, persons performing pest control at an apartment building must be licensed. As a result, you must submit a pest control invoice by a licensed contractor that includes a date, contractor signature, units treated and the type of pest treated.

Finally, you may submit photographs in support of the above if you wish. However, they are only necessary if the TDHCA asks for them as specific support for a deficiency still in question. If you do submit photographs, please make sure that they are labeled and supporting work orders and or invoices are attached. Photographs, by themselves, are not acceptable documentation of correction.



## Attachment 2

### Tenant File Instructions

Submit the following fully acceptable file monitoring documentation via CMTS on or before August 6, 2014:

1. Part B of the 2011 and 2012 Annual Owner's Compliance Reports. If you have technical problems, please contact TDHCA's database administrator, James Roper, at 512.936.7751 or [james.roper@tdhca.state.tx.us](mailto:james.roper@tdhca.state.tx.us);
2. Unit 121: Choose option (a) or (b):
  - (a) If you choose to submit a material LURA amendment request, you must:
    - i. Submit the \$2,500 processing fee;
    - ii. Follow the material LURA amendment instructions beginning at page 17 of <http://www.tdhca.state.tx.us/asset-management/docs/PostCarryoverActivitiesManual.pdf> and submit the required documentation to TDHCA.
  - (b) If you choose to convert unit 121 from an office to a residential unit instead of submitting a material LURA amendment request:
    - i. The conversion must be complete and you must submit related work orders regarding the make-ready process, along with a letter certifying that the unit is ready for occupancy and photographs of the unit.
    - ii. In addition:
      1. If the unit is occupied as of August 6, 2014, you must submit copies of the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice.
      2. If the unit is vacant as of August 6, 2014, you must submit the full tenant file as soon as the unit is occupied by a qualified household. A complete tenant file includes: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice. *Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement (i) above has been fulfilled and the unit is vacant as of August 6, 2014.*

3. Unit 234:

(a) The conversion must be complete and you must submit related work orders regarding the make-ready process, along with a letter certifying that the unit is ready for occupancy and photographs of the unit.

(b) In addition:

i. If the unit is occupied as of August 6, 2014, you must submit copies of the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice.

ii. If the unit is vacant as of August 6, 2014, you must submit the full tenant file as soon as the unit is occupied by a qualified household. A complete tenant file includes: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Fair Housing Choice Disclosure Notice. *Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement (a) above has been fulfilled and the unit is vacant as of August 6, 2014.*

4. Lease violations for units 129, 132, 227, 115, 117, 110, 137, 237, and 241: 10 TAC §60.110 (now §10.613) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period and for 3 years after termination of a LURA in accordance with Revenue Ruling 2004-82. In addition, HTC developments are prohibited 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. These prohibitions must be included in the lease or a lease addendum. The Texas Apartment Association has an affordable lease addendum that has incorporated this required language and may be used if you are a TAA member.

Execute an appropriate lease addendum for all units in the Development, including the units listed above, and submit a sample lease addendum to TDHCA along with a letter indicating that the addendum has been signed by all households. If you do not use TAA forms and are uncertain whether your lease addendum form is acceptable, please submit a sample as soon as possible so that TDHCA staff can review and approve it.

5. Pre-onsite documentation violations. Submit all of the following documentation:

- (a) Entrance Interview Questionnaire (form is available via CMTS);
- (b) Unit Status Report (USR) reporting occupancy as of December 31, 2013 (report is available in CMTS);
- (c) Copies of current Utility Allowance (Public Housing Authority schedule, letter from local provider or other Department approved documentation) and documentation of allowance used for the two years prior;
- (d) Current Affirmative Marketing Plan, along with evidence of special outreach to those identified as being least likely to apply and the disabled. Examples of acceptable special outreach evidence includes letters, flyers, etc;
- (e) Written leasing criteria, including required deposits and refund policy;
- (f) Written wait list policy;
- (g) Documents supporting the costs charged to tenants for any application fees or charges; and
- (h) Verification that the contact information currently entered into CMTS is correct.

6. Household income above limit upon initial occupancy violations for units 110, 115, 129, 132, and 227. If units are occupied by a qualified household that occupied the unit as of the date of the last onsite review that was conducted on July 25, 2012, follow the instructions below.

<b>Unit # 110</b>	<b>Bldg. # C</b>	<b>BIN # TX9100160</b>
<b>Finding</b>	Household income above income limit upon initial occupancy	
<b>Noncompliance Date</b>	04/01/2012	<b>Current Status Uncorrected - Not Reportable to IRS</b>
<b>Reason</b>	The Department approved Income Certification form must be used. Complete each section of the form. Each adult household member must sign and date the form. All verifications obtained to demonstrate household eligibility must be dated within 120 days of the effective date of the certification. All new move-ins, household eligibility must be demonstrated with supporting income and asset documentation. No household should occupy a low-income unit without being properly certified. During the review it was determined that the household did not sign or date the initial Income Certification form.	
<b>Corrective Action</b>	When the unit becomes available, occupy the unit with an eligible household and provide copies of the: application, necessary verifications, Income Certification and first page and signatory page of the lease.	
<b>Supplemental Corrective Action</b>	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.	
<b>Unit # 115</b>	<b>Bldg. # B</b>	<b>BIN # TX9100159</b>
<b>Finding</b>	Household income above income limit upon initial occupancy	
<b>Noncompliance Date</b>	04/01/2012	<b>Current Status Uncorrected - Not Reportable to IRS</b>
<b>Reason</b>	The Department approved Income Certification form must be used. Complete each section of the form. Each adult household member must sign and date the form. All verifications obtained to demonstrate household eligibility must be dated within 120 days of the effective date of the certification. All new move-ins, household eligibility must be demonstrated with supporting income and asset documentation. No household should occupy a low-income unit without being properly certified. During the review it was determined that the household did not sign or date the initial Income Certification form.	
<b>Corrective Action</b>	When the unit becomes available, occupy the unit with an eligible household and provide copies of the: application, necessary verifications, Income Certification and first page and signatory page of the lease.	
<b>Supplemental Corrective Action</b>	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.	
<b>Unit # 129</b>	<b>Bldg. # A</b>	<b>BIN # TX9100158</b>
<b>Finding</b>	Household income above income limit upon initial occupancy	
<b>Noncompliance Date</b>	02/01/2012	<b>Current Status Uncorrected - Not Reportable to IRS</b>
<b>Reason</b>	The Department calculated household income using the employment verification provided for the Head of Household. The total household income equals \$30940, which exceeds the income limit of \$29100 for a one person household. The Household did not execute the Department approved Income Certification form.	
<b>Corrective Action</b>	When the unit becomes available, occupy the unit with an eligible household and provide copies of the: application, necessary verifications, Income Certification and first page and signatory page of the lease.	
<b>Supplemental Corrective Action</b>	Follow the above listed corrective action. If the household's status has changed since move in, in accordance with Chapter 4 (page 4-35) of the IRS 8823 Audit Guide, the owner has the option to certify the household using current income and asset sources and current income limits to correct. If the household is currently eligible complete and execute an Income Certification form.	
<b>Unit # 132</b>	<b>Bldg. # A</b>	<b>BIN # TX9100158</b>
<b>Finding</b>	Household income above income limit upon initial occupancy	
<b>Noncompliance Date</b>	04/01/2012	<b>Current Status Uncorrected - Not Reportable to IRS</b>
<b>Reason</b>	The Department approved Income Certification form must be used. Complete each section of the form. Each adult household member must sign and date the form. All verifications obtained to demonstrate household eligibility must be dated within 120 days of the effective date of the certification. All new move-ins, household eligibility must be demonstrated with supporting income and asset documentation. No household should occupy a low-income unit without being properly certified. During the review it was determined that the household did not sign or date the initial Income Certification form.	
<b>Corrective Action</b>	When the unit becomes available, occupy the unit with an eligible household and provide copies of the: application, necessary verifications, Income Certification and first page and signatory page of the lease.	
<b>Supplemental Corrective Action</b>	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.	
<b>Unit # 227</b>	<b>Bldg. # A</b>	<b>BIN # TX9100158</b>
<b>Finding</b>	Household income above income limit upon initial occupancy	
<b>Noncompliance Date</b>	04/01/2012	<b>Current Status Uncorrected - Not Reportable to IRS</b>
<b>Reason</b>	The Department approved Income Certification form must be used. Complete each section of the form. Each adult household member must sign and date the form. All verifications obtained to demonstrate household eligibility must be dated within 120 days of the effective date of the certification. All new move-ins, household eligibility must be demonstrated with supporting income and asset documentation. No household should occupy a low-income unit without being properly certified. During the review it was determined that the household did not sign or date the initial Income Certification form.	
<b>Corrective Action</b>	When the unit becomes available, occupy the unit with an eligible household and provide copies of the: application, necessary verifications, Income Certification and first page and signatory page of the lease.	
<b>Supplemental Corrective Action</b>	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.	

- continued from page 13 regarding Household income violations - If units 110, 115, 129, 132, or 227 are not occupied by a qualified household or the residents have changed since July 25, 2012, follow instructions in the chart below.

7. **Annual Eligibility Certification violations** for units 122, 123, 124, 125, 126, 127, 130, 133, 224, 225, 226, 227, 228, 229, 230, 114, 115, 116, 118, 119, 120, 217, 104, 105, 107, 108, 109, 111, 112, 202, 204, 205, 207, 208, 209, 211, 212, 134, 135, 136, 139, 140, 141, 235, 236, 238, 239, 240, and 241. If unit is occupied by a qualified household that occupied the unit as of the date of the last onsite review that was conducted on July 25, 2012, complete an Annual Eligibility Certification for the current year and submit for review. If unit is not occupied by a qualified household or the residents have changed since July 25, 2012, follow instructions in the chart below.

<b>Circumstance with respect to units listed above</b>	<b>Required Action</b>
If unit is occupied by a new qualified household that occupied the unit after July 25, 2012	Submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none"> <li>1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.</li> <li>2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. <i>Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i></li> </ol>
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none"> <li>1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.</li> <li>2. As soon as the unit become available and is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. <i>Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i></li> </ol>
If unit is vacant	<ol style="list-style-type: none"> <li>1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</li> <li>2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file, including the tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Fair Housing Choice Disclosure Notice. <i>Receipt after August 6, 2014 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i></li> </ol>

### Attachment 3

#### **Tenant File Guidelines**

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application:** The Department does not have a required form to screen households, but we make this form available for that purpose. It is required that households 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.
2. **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. **First hand verifications:** 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;
  - b. **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;
  - c. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits;
  - d. **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;
  - e. **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.

3. **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:** 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** 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.
  - c. **3<sup>rd</sup> 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 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.
4. **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 (and be signed by) each adult household member.
5. **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 Tex. Admin. Code §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 Tex. Admin. Code §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. The Texas Apartment Association 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.

6. **Fair Housing Choice Disclosure Notice:** Must be signed by all new adult applicants at the time of their application, and no more than 120 days prior to the effective date of their lease. This requirement pertains to all households taking initial occupancy, including households transferring within the same development.

If a household was not provided this notice prior to move in or transfer, the property must ensure that the form is signed no more than 120 days and no less than 30 days prior to the date that each household is legally obligated to provide written notice of their intention to terminate or renew their lease. A calculator is available at <http://www.tdhca.state.tx.us/pmcdocs/FHDNoticeCalculator.xls> in order to help calculate the appropriate execution date.

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**BOARD ACTION REQUEST**

**LEGAL SERVICES**

**MAY 8, 2014**

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Alamo Plaza Apartments (HOME # 530687)

**RECOMMENDED ACTION**

**WHEREAS**, Alamo Plaza Apartments in Elgin, Bastrop County, owned by Senior Citizens Aid, Inc. ("Senior"), has a history of uncorrected violations of the applicable Land Use Restriction Agreement ("LURA");

**WHEREAS**, on January 6, 2010, representatives of Senior met with the TDHCA Administrative Penalty Committee and informally agreed to correct all issues of noncompliance by January 31, 2010;

**WHEREAS**, issues of noncompliance were not fully resolved as required;

**WHEREAS**, on February 17, 2010, representatives of Senior met with the TDHCA Administrative Penalty Committee a second time and agreed, subject to Board approval, to pay an administrative penalty in the amount of \$5,000.00, with the possibility of partial deferral and forgiveness provided that all violations were resolved as required by the Agreed Final Order;

**WHEREAS**, corrections were made as required and a reduced administrative penalty in the amount of \$500.00 was paid;

**WHEREAS**, Alamo Plaza was referred back to the Administrative Penalty Committee for multiple new uncorrected violations of the LURA;

**WHEREAS**, on April 15, 2014, representatives of Senior met with the TDHCA Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order with the following requirements:

1. Senior is assessed an administrative penalty in the amount of \$2,500.00, which is partially deferred and may be satisfied, in lieu, as follows;
2. A \$1,000.00 portion of the assessed administrative penalty shall be due and payable on or before June 9, 2014;
3. All outstanding violations must be corrected and sufficient evidence of correction must be submitted to TDHCA as indicated in the attachments of the Agreed Final Order on or before June 9, 2014;
4. If Senior timely and fully complies with the terms and conditions of the Agreed Final Order, the remaining \$1,500.00 portion of the administrative penalty shall be deferred and forgiven; and

5. If outstanding violations are not fully resolved and sufficient evidence of the corrections have not been submitted within the established timeline, the remaining \$1,500.00 administrative penalty will become due and payable.

**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 the Agreed Final Order assessing a \$2,500.00 administrative penalty as outlined above for noncompliance at Alamo Plaza Apartments (HOME 530687) substantially in the form presented at this meeting, and including any non-substantive technical corrections, is hereby adopted as the order of this Board.

### **BACKGROUND**

Senior is the owner of Alamo Plaza Apartments, a 28-unit apartment complex located in Elgin, Bastrop County, Texas, which is subject to a LURA signed in 2002 in consideration for an interest-free HOME loan in the amount of \$580,293.00 awarded by TDHCA.

Despite numerous attempts by the Compliance Division, Legal Division, and Administrative Penalty Committee to obtain corrective action, Senior has been unable to operate the property in compliance with LURA requirements and does not respond to monitoring deadlines. Representatives of the owner first met with the Administrative Penalty Committee during January 2010 and agreed to resolve all violations by the end of the month. They failed to fully resolve the violations and a second informal conference was held on February 17, 2010. Owner agreed to pay a maximum penalty of \$5,000.00, subject to partial deferral and forgiveness if the terms of the Agreed Final Order were met. Acceptable corrections were submitted and a reduced administrative penalty in the amount of \$500.00 was paid.

The property has since been referred numerous times, but resolved violations immediately upon referral for an administrative penalty. The most recent referral was in March 2014 and a third informal conference was held on April 15, 2014. Partial file monitoring corrections were submitted after receiving notice of the April informal conference, but the submission was unacceptable. Senior agreed to pay a maximum penalty of \$2,500.00, to be partially deferred and forgiven as indicated above.

Current violations for which satisfactory evidence of corrective action has not been provided include:

1. Failure to execute Fair Housing Disclosure Notices;
2. Failure to provide required lead-based paint lease disclosures; and
3. Failure to ensure that household incomes are at or below the applicable limits upon initial occupancy.

Consistent with direction from the Department's Administrative Penalty Committee, a partially deferred penalty in the amount of \$2,500.00 is recommended, with \$1,000.00 to be paid on or before June 9, 2014, and the remaining \$1,500.00 to be deferred and possibly forgiven provided that Senior complies with all terms of the Agreed Final Order.

ENFORCEMENT ACTION AGAINST  
SENIOR CITIZEN AID, INC. WITH  
RESPECT TO ALAMO PLAZA  
APARTMENTS (HOME FILE #  
530687)

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BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 8<sup>th</sup> day of May, 2014, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **SENIOR CITIZEN AID, INC.**, a Texas corporation ("Senior" or "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 Administrative Penalties Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

### **FINDINGS OF FACT**

#### **Jurisdiction:**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.
2. Respondent was awarded an interest-free HOME loan by the Board in 2000, in the total amount of \$580,293 to build and operate Alamo Plaza Apartments ("Property") (HOME file No. 530687 / CMTS No. 3200 / LDLD No. 126).
3. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective November 13, 2002, and filed of record at Volume 1284, Page 752 of the Official Public Records of Real Property of Bastrop County, Texas ("Records").

4. Respondent is a Texas corporation that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

5. Respondent has a history of violations and previously signed an Agreed Final Order, agreeing to a \$5,000.00 Administrative Penalty which was to be partially forgivable provided that Respondent complied with its requirements on or before April 30, 2010. Respondent submitted acceptable corrective documentation and paid a reduced administrative penalty in the amount of \$500.00.
6. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on April 5, 2011. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 60.118 (Property Condition Standards). Reports were mailed to Respondent and, in conformance with 10 TEX. ADMIN. CODE § 60.119 (Notices to Owner), as amended, a 90-day corrective action deadline of July 11, 2011 was set to provide Respondent a reasonable opportunity to respond to the report and bring the property into compliance. Full corrective documentation was not received until October 26, 2011, after intervention by the Administrative Penalty Committee.
7. An on-site monitoring review was conducted on September 27, 2011, 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 January 17, 2012 corrective deadline was set, however, the following violations were not resolved until April 18, 2012, after intervention by the Administrative Penalty Committee:
  - a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114(d)(3) (Requirements Pertaining to Households with Rental Assistance); and
  - b. Respondent failed to complete or document Income Recertifications for units A3, A4, B1, C1, D1, D2, D5, D11, or D14, a violation of 10 TEX. ADMIN. CODE §60.111 (Annual Recertification), which requires annual recertification of tenants every sixth year of the affordability period.

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer 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.

8. An on-site monitoring review was conducted on September 20, 2012, 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 January 16, 2013 corrective deadline was set, however, the following violations were not resolved until March 26, 2013, after intervention by the Administrative Penalty Committee:
  - a. Respondent failed to perform Housing Quality Standards ("HQS") HOME inspections, a violation of 10 TEX. ADMIN. CODE §60.118(g) (Property Condition Standards) which requires rental properties assisted with HOME funds to complete annual HQS inspections;
  - b. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §60.114(d)(3) (Requirements Pertaining to Households with Rental Assistance) which requires developments to prepare affirmative marketing plans; and
  - c. Respondent failed to provide pre-onsite documentation, a violation of 10 TEX. ADMIN. CODE §60.115 (Onsite Monitoring), which requires developments to make all necessary documentation available to the Department.
9. On May 1, 2013, TDHCA sent notice that Respondent had failed to timely submit their 2012 Annual Owner's Compliance Report, a violation of 10 TEX. ADMIN. CODE §10.603 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The final report parts were not received until June 21, 2013, after intervention by the Administrative Penalty Committee.
10. An on-site monitoring review was conducted on October 24, 2013, 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 March 2, 2014 corrective deadline was set, however, no corrective documentation was received until March 17, 2014, after intervention by the Administrative Penalty Committee. The following violations remain unresolved:
  - a. Respondent failed to provide the Fair Housing Disclosure Notice for units B1 and B3, a violation of 10 TEX. ADMIN. CODE §10.608 (Lease Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period;
  - b. Respondent failed to execute required lease provisions regarding lead-based paint for units A4, B1, B3, C1, D1, and D2, a violation of 10 TEX. ADMIN. CODE §10.608(g) (Lease Requirements), which requires all developments built before 1978 to provide lead-based paint disclosures within each lease; and
  - c. Household income above limit upon initial occupancy for unit D2, a violation of 10 TEX. ADMIN. CODE §10.606 (Determination, Documentation, and Certification of Annual Income), which outlines how to properly determine household income.

11. The following violations remain outstanding at the time of this order:
  - a. Fair Housing Disclosure Notice violations described in FOF #10a;
  - b. Lease language violations described in FOF #10b; and
  - c. Household income above limit upon initial occupancy violation described in FOF #10c.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent has a history of violations as described in FOF#5
4. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2011 by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
5. Respondent violated 10 TEX. ADMIN. CODE § 60.114 in 2011 and 2012 by failing to provide an affirmative marketing plan.
6. Respondent violated 10 TEX. ADMIN. CODE § 60.111 in 2011 by failing to complete tenant income recertifications.
7. Respondent violated 10 TEX. ADMIN. CODE § 60.118 in 2012 by failing to perform HQS inspections.
8. Respondent violated 10 TEX. ADMIN. CODE § 60.115 in 2012 by failing to provide required pre-onsite documentation.
9. Respondent violated 10 TEX. ADMIN. CODE § 10.603 in 2013 by failing to timely submit the 2012 Annual Owner's Compliance Report.
10. Respondent violated 10 TEX. ADMIN. CODE § 10.608 in 2013 by failing to provide fair housing disclosure notices.
11. Respondent violated 10 TEX. ADMIN. CODE § 10.608 in 2013 by failing to execute required lease provisions regarding lead-based paint.
12. Respondent violated 10 TEX. ADMIN. CODE § 10.606 in 2013 by failing to properly document household income.

13. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
14. 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.
15. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 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.
16. An administrative penalty of \$2,500 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

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 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 \$2,500, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$1,000.00 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before June 9, 2014.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in Attachment 1 and submit full documentation of the corrections to TDHCA on or before June 9, 2014.

**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 \$1,500.00 remaining assessed administrative penalty, and that remaining 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, then the remaining administrative penalty in the amount of \$1,500.00 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.



**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/pmedocs/CMTSUserGuide-AttachingDocs.pdf>. Penalty payments must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

*[Remainder of page intentionally blank]*

Approved by the Governing Board of TDHCA on \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Name: J. Paul Ozer  
Title: Chair of the Board of TDHCA

By: \_\_\_\_\_  
Name: Barbara B. Deane  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS** §  
§  
**COUNTY OF \_\_\_\_\_** §

Before me, the undersigned notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared J. Paul Ozer, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared Barbara B. Deane, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_, a notary public in and for the State of \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, known to me or proven to me through \_\_\_\_\_ 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 the authorized representative of Respondent, owner of Alamo Plaza Apartments, 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 Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**SENIOR CITIZEN AID, INC.**, a Texas corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

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

## Attachment 1

### **Tenant File Instructions**

Follow the instructions below and submit documentation on or before June 9, 2014:

1. Failure to execute required lease provisions regarding lead-based paint for units A4, B-1, B-3, C-1, D1, and D-2.

Lead-based paint disclosure forms are available online at: <http://www.tdhca.state.tx.us/pmcdocs/Disclosure-LeadBasedPaint-Hazards.pdf>.

Disclosure forms were previously submitted for multiple units, but the forms were all filled out incorrectly. Instruction: read the forms, answer the questions properly, have tenants sign and date the form, then submit. Problem examples:

- a. Unit A4, B-1, C-1, D1 – All of the boxes were checked. This is not an option under the form.
  - b. Unit B-3 – None of the boxes were checked. This is not an option under the form.
  - c. Unit D-2 – No form submitted.
2. Failure to provide Fair Housing Disclosure Notice for units B-1 and B-3.

A set of Fair Housing Disclosure Notices were submitted but are not acceptable because the property was not using the form at all when TDHCA performed its onsite review and the forms were not signed during the required time period. Form is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingChoiceDisclosureNotice.pdf>.

In order to correct the Fair Housing Disclosure Notice violation for units B-1 and B-3, you must have the household sign the form no more than 120 days and no less than 30 days prior to the date that the unit's lease requires the household to provide notice of renewal or notice to vacate. A calculator to help determine the appropriate execution date is available at <http://www.tdhca.state.tx.us/pmcdocs/FHDNoticeCalculator.xls>.

Instruction: Use the calculator tool indicated above to determine the appropriate execution dates for units B-1 and B-3 and submit a letter to TDHCA by the deadline above indicating when the forms will be executed, then submit the executed forms during the appropriate time frame. If the calculator indicates that the forms can be executed between now and the June 9, 2014 deadline, then submit the new executed forms.

If a household did not sign the form within the required time period and later moves out without signing the form, the finding is uncorrectable.

3. Household income above limit upon initial occupancy / program not leased to low-income household for unit 2 in Building D.

An updated Tenant Income Certification was submitted but is unacceptable because it was back-dated. It would have been accepted if it had been dated as of the date that it was actually signed by the tenant. Instruction: re-do the certification and ensure that it is dated as of the date the form is actually signed by the tenant.

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**BOARD REPORT ITEM**

**FINANCIAL ADMINISTRATION DIVISION**

**MAY 8, 2014**

Report on the Department's 2<sup>nd</sup> Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")

**BACKGROUND**

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures which are not subject to the PFIA, and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is \$955,572,731 of which \$923,364,297 is not subject to the PFIA. This report addresses the remaining \$32,208,434 (See Page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts which are all held at the Texas Treasury Safekeeping Trust Company ("TTSTC"), primarily in the form of overnight repurchase agreements which are fully collateralized and secured by the U.S. Government Securities. A repurchase agreement is the purchase of a security with an agreement to repurchase that security at a specific price and date which in this case was February 28, 2014, with an effective interest rate of 0.03%. The overall objective of these investments is to safeguard principal while maintaining liquidity.

**Below is a description of each fund group and its corresponding accounts.**

- The **General Fund** accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate program ("MCC"), escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate Program ("BMIR").
- The **Housing Trust Fund** accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.
- The **Compliance** accounts maintain funds from compliance fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements ("LURAs") that are issued to each Developer. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The **Housing Initiative** accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Qualified Allocation Plan ("QAP"). These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.

This report is in the prescribed format and detail required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 thru 3.

During the 2<sup>nd</sup> Quarter, as it relates to the investments covered by the PFIA, the carrying value decreased by \$179,249 (See Page 1) for a total of \$32,208,434. The decrease is described below by fund groups.

**General Fund:** The General Fund decreased by \$581,093. This consists primarily of \$906,895 received in bond administration fees and MCC fees and disbursements of \$1.2 million transferred to fund the operating budget, and \$216,203 in bond maintenance fees.

**Housing Trust Fund:** The Housing Trust Fund decreased \$984,667. This consists primarily of \$647,876 received in loan repayments and disbursements of \$1.7 million for loans and grants.

**Compliance:** Compliance increased \$1.6 million. The Department received \$3.3 million in income related to compliance fees and transferred \$1.7 million to fund the operating budget.

**Housing Initiative:** Housing Initiative decreased \$164,369. The Department received \$699,599 in fees related to tax credit activities and transferred \$848,750 to fund the operating budget.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION**

**PUBLIC FUNDS INVESTMENT ACT  
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)  
QUARTER ENDING FEBRUARY 28, 2014**





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION  
PUBLIC FUNDS INVESTMENT ACT  
Internal Management Report (Sec. 2256.023)  
Quarter Ending February 28, 2014

(b) (4) Summary statement of each pooled fund group:

NON-INDENTURE RELATED:	Investment Type	FAIR VALUE (MARKET) @ 11/30/13	CARRYING VALUE @ 11/30/13	CARRYING VALUE @ 2/28/14	FAIR VALUE (MARKET) @ 2/28/14	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT REC'BL @ 2/28/14	RECOGNIZED GAIN
General Fund	Mortgage Backed Securities	2,432,558.51	2,320,779.16	2,027,139.56	2,119,177.13	(19,741.78)	12,199.53	0.00
General Fund	Repurchase Agreement	6,567,971.97	6,567,971.97	6,280,518.16	6,280,518.16	-	5.24	0.00
Housing Trust Fund	Repurchase Agreement	7,956,924.86	7,956,924.86	6,972,257.41	6,972,257.41	-	6.04	0.00
Compliance	Repurchase Agreement	7,250,785.80	7,250,785.80	8,801,666.12	8,801,666.12	-	7.34	0.00
Housing Initiatives	Repurchase Agreement	8,291,221.81	8,291,221.81	8,126,852.90	8,126,852.90	-	6.97	0.00
<b>TOTAL</b>		<b>32,489,462.85</b>	<b>32,387,683.60</b>	<b>32,208,434.15</b>	<b>32,300,471.72</b>	<b>(19,741.78)</b>	<b>12,225.12</b>	<b>0.00</b>

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:  
Tim Nelson completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 10, 2014  
David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 16, 2013

	Date <u>4/28/14</u>
David Cervantes, Chief Financial Officer	
	Date <u>4-22-14</u>
Tim Nelson, Director of Bond Finance	

**Texas Department of Housing and Community Affairs**  
**Non-Indenture Related Investment Summary**  
**For Period Ending February 28, 2014**

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 11/30/13	Beginning Market Value 11/30/13	Accretions/Purchases	Amortizations/Sales	Maturities	Transfers	Ending Carrying Value 02/28/14	Ending Market Value 02/28/14	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	1,553,157.87	1,553,157.87	873.35				1,554,031.22	1,554,031.22		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	11,477.74	11,477.74		(494.53)			10,983.21	10,983.21		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	195,621.60	195,621.60		(122,422.71)			73,198.89	73,198.89		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	67,034.61	67,034.61	0.00				67,034.61	67,034.61		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	629,969.92	629,969.92	0.00				629,969.92	629,969.92		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	2,542,460.02	2,542,460.02		(680,592.35)			1,861,867.67	1,861,867.67		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	283,343.52	283,343.52			12.29		283,355.81	283,355.81		
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	153,066.45	153,066.45	67,898.14				220,964.59	220,964.59		
GNMA	General Fund	7.50	08/31/89	07/20/18	88,419.52	95,775.14			(4,504.09)		83,915.43	90,136.08	(1,134.97)	
GNMA	General Fund	7.50	10/31/89	09/20/18	183,594.08	198,015.39			(25,596.18)		157,997.90	169,233.13	(3,186.08)	
GNMA	General Fund	7.50	01/01/90	11/20/18	96,072.00	103,732.78			(5,272.00)		90,800.00	97,256.79	(1,203.99)	
GNMA	General Fund	7.50	01/01/90	12/20/18	79,759.99	86,659.23			(3,817.66)		75,942.33	81,790.65	(1,050.92)	
GNMA	General Fund	7.50	02/27/90	12/20/18	8,628.01	8,661.49			(377.17)		8,250.84	8,284.92	0.60	
GNMA	General Fund	7.50	03/30/90	01/20/19	93,399.47	101,478.52			(4,693.20)		88,706.27	95,537.54	(1,247.78)	
GNMA	General Fund	7.50	04/26/90	03/20/19	73,019.42	79,355.60			(3,396.93)		69,622.49	74,984.12	(954.55)	
GNMA	General Fund	7.50	05/29/90	04/20/19	94,138.07	101,969.42			(4,981.36)		89,156.71	95,765.90	(1,222.16)	
GNMA	General Fund	2.65	01/29/13	12/15/42	48,692.62	45,231.06			(309.79)		48,382.83	45,955.95	1,034.68	
GNMA	General Fund	3.20	01/29/13	10/15/42	113,530.56	111,128.25			(551.41)		112,979.15	112,172.48	1,595.64	
Repo Agmt	General Fund	0.03	02/28/14	03/03/14	1,131,840.24	1,131,840.24	447,272.00				1,579,112.24	1,579,112.24		
GNMA	General Fund	8.19	07/25/90	06/20/15	7,002.28	7,100.80			(1,867.92)		5,134.36	5,206.14	(26.74)	
GNMA	General Fund	8.75	10/31/89	09/20/18	16,176.01	16,253.98			(705.76)		15,470.25	15,549.30	1.08	
GNMA	General Fund	7.50	11/30/89	10/20/18	214,821.59	232,477.78			(12,606.92)		202,214.67	217,008.70	(2,862.16)	
GNMA	General Fund	8.75	11/30/89	09/20/18	15,331.62	15,405.52			(665.21)		14,666.41	14,741.36	1.05	
GNMA	General Fund	8.75	01/01/90	11/20/18	48,274.23	53,211.24			(2,288.12)		45,986.11	49,896.77	(1,026.35)	
GNMA	General Fund	8.75	05/29/90	02/20/19	8,688.61	8,730.58			(360.78)		8,370.83	8,370.39	0.59	
GNMA	General Fund	8.75	04/26/90	03/20/19	63,911.82	70,803.43			(2,844.42)		61,067.40	66,921.93	(1,037.08)	
GNMA	General Fund	8.75	06/28/90	04/20/19	5,084.66	5,107.95			(695.32)		4,389.34	4,410.32	(2.31)	
GNMA	General Fund	7.19	01/22/90	11/20/14	16,882.78	17,047.56			(4,591.69)		12,291.09	12,369.75	(86.12)	
GNMA	General Fund	7.19	01/01/90	11/20/14	3,399.72	3,410.57			(826.17)		2,573.55	2,581.91	(2.49)	
GNMA	General Fund	7.19	01/01/90	12/20/14	5,089.63	5,129.63			(1,581.47)		3,508.16	3,531.35	(16.81)	
GNMA	General Fund	7.19	01/20/90	01/20/15	15,757.48	15,903.24			(4,845.49)		10,911.99	10,977.46	(80.29)	
GNMA	General Fund	8.19	01/01/90	01/20/15	8,895.46	8,992.87			(2,636.94)		6,258.52	6,299.51	(56.42)	
GNMA	General Fund	7.19	02/27/90	01/20/15	10,876.93	10,981.78			(2,996.81)		7,880.12	7,927.72	(57.25)	
GNMA	General Fund	8.19	02/27/90	12/20/14	4,739.10	4,792.37			(1,721.90)		3,017.20	3,047.43	(23.04)	
GNMA	General Fund	7.19	02/27/90	01/20/15	15,136.16	15,289.94			(4,438.11)		10,698.05	10,767.80	(84.03)	
GNMA	General Fund	8.19	02/27/90	01/20/15	14,149.05	14,313.89			(4,680.48)		9,468.57	9,539.96	(93.45)	
GNMA	General Fund	7.19	03/30/90	01/20/15	6,955.81	7,017.72			(1,611.70)		5,344.11	5,387.61	(18.41)	
GNMA	General Fund	8.19	03/30/90	01/20/15	11,642.76	11,788.76			(2,797.95)		8,844.81	8,947.68	(43.13)	
GNMA	General Fund	7.19	03/30/90	02/20/15	3,596.90	3,608.37			(859.43)		2,737.47	2,746.37	(2.57)	
GNMA	General Fund	8.19	03/30/90	02/20/15	13,584.05	13,749.10			(3,264.81)		10,319.24	10,397.98	(86.31)	
GNMA	General Fund	7.19	04/26/90	03/20/15	13,849.30	13,983.64			(4,177.83)		9,771.47	9,731.43	(74.38)	
GNMA	General Fund	8.19	04/26/90	03/20/15	8,939.50	9,050.98			(6,127.39)		2,812.11	2,822.77	(100.82)	
GNMA	General Fund	7.19	04/26/90	03/20/15	4,039.56	4,071.19			(1,541.16)		2,498.40	2,506.52	(23.51)	
GNMA	General Fund	8.19	04/26/90	03/20/15	39,347.93	40,262.77			(12,183.09)		27,164.84	27,427.25	(652.43)	
GNMA	General Fund	7.19	05/29/90	04/20/15	6,663.73	6,721.10			(1,575.84)		5,087.89	5,129.25	(16.01)	
GNMA	General Fund	8.19	05/29/90	03/20/15	6,254.83	6,279.29			(1,392.05)		4,862.78	4,882.23	(5.01)	
GNMA	General Fund	7.19	05/29/90	04/20/15	10,970.84	11,081.32			(3,197.13)		7,773.71	7,823.69	(60.50)	
GNMA	General Fund	8.19	05/29/90	04/20/15	47,488.81	48,797.13			(16,409.40)		31,079.41	31,461.69	(926.04)	
GNMA	General Fund	7.19	06/28/90	05/20/15	4,509.80	4,524.73			(890.56)		3,619.24	3,631.69	(2.48)	
GNMA	General Fund				1,231.44	1,234.01			(1,231.44)					
GNMA	General Fund	7.19	06/28/90	05/20/15	4,239.18	4,253.42			(717.09)		3,522.09	3,534.49	(1.84)	
GNMA	General Fund	8.19	06/28/90	05/20/15	30,735.53	31,251.27			(5,553.26)		25,182.27	25,437.37	(260.64)	
GNMA	General Fund	6.19	06/28/90	05/20/15	7,773.75	8,025.85			(1,360.72)		6,413.03	6,683.34	18.21	
GNMA	General Fund				1,246.98	1,251.94			(1,246.98)					
GNMA	General Fund	7.19	09/13/90	06/20/15	5,171.65	5,218.56			(1,100.06)		4,071.59	4,106.04	(12.46)	
GNMA	General Fund	8.19	09/13/90	07/20/15	12,707.79	12,888.75			(2,963.76)		9,744.03	9,873.53	(51.46)	
GNMA	General Fund	7.19	09/13/90	07/20/15	8,598.08	8,675.12			(2,659.96)		5,938.12	5,958.25	(56.91)	
GNMA	General Fund	8.19	09/13/90	08/20/15	17,851.02	18,098.08			(3,333.86)		14,517.16	14,645.06	(119.16)	
GNMA	General Fund	6.19	09/13/90	07/20/15	8,930.97	9,220.60			(1,427.17)		7,503.80	7,820.09	26.66	
GNMA	General Fund	8.19	09/28/90	08/20/15	12,585.35	12,764.57			(2,298.75)		10,286.60	10,423.51	(42.31)	
GNMA	General Fund	6.19	09/28/90	08/20/15	19,621.04	20,257.35			(3,533.69)		16,087.35	16,765.43	41.77	

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 11/30/13	Beginning Market Value 11/30/13	Accretions/Purchases	Amortizations/Sales	Maturities	Transfers	Ending Carrying Value 02/28/14	Ending Market Value 02/28/14	Change In Market Value	Recognized Gain
GNMA	General Fund	7.19	09/28/90	08/20/15	18,164.94	18,383.46			(2,952.64)		15,212.30	15,329.28	(101.54)	
GNMA	General Fund	8.19	09/28/90	08/20/15	30,747.37	31,263.93			(6,231.26)		24,516.11	24,762.25	(270.42)	
GNMA	General Fund	7.50	10/31/90	07/20/19	20,253.62	20,332.61			(715.22)		19,538.40	19,619.48	2.09	
GNMA	General Fund	7.19	10/31/90	08/20/15	2,182.61	2,190.07			(310.32)		1,872.29	1,879.05	(6.70)	
GNMA	General Fund	8.19	10/31/90	09/20/15	16,072.84	16,303.65			(2,553.52)		13,519.32	13,640.32	(109.81)	
GNMA	General Fund	6.19	10/31/90	09/20/15	10,606.76	11,070.06			(1,546.52)		9,060.24	9,544.06	20.52	
GNMA	General Fund	8.19	10/31/90	09/20/15	28,182.04	28,621.68			(4,716.52)		23,465.52	23,707.21	(197.95)	
GNMA	General Fund	6.19	11/28/90	10/20/15	18,290.16	19,089.07			(4,830.89)		13,459.27	14,178.00	(80.18)	
GNMA	General Fund	8.19	11/28/90	10/20/15	38,762.76	40,062.48			(5,839.39)		32,923.37	33,573.94	(649.15)	
GNMA	General Fund	7.50	12/21/90	08/20/19	14,402.03	14,458.20			(518.99)		13,883.04	13,940.65	1.44	
GNMA	General Fund	7.19	12/21/90	10/20/15	13,725.07	13,871.38			(6,469.61)		7,255.46	7,282.09	(119.68)	
GNMA	General Fund	8.19	12/21/90	11/20/15	17,659.87	17,918.76			(2,776.69)		14,883.18	15,016.68	(125.39)	
GNMA	General Fund	8.19	02/25/91	10/20/15	5,156.10	5,177.45			(727.68)		4,428.42	4,447.64	(2.13)	
GNMA	General Fund	6.19	01/25/91	11/20/15	19,272.69	20,114.52			(2,613.75)		16,658.94	17,548.53	47.76	
GNMA	General Fund	8.19	01/28/91	11/20/15	3,331.22	3,341.01			(1,816.99)		1,514.23	1,516.67	(7.35)	
GNMA	General Fund	8.19	02/25/90	01/20/16	10,912.91	11,082.28			(1,544.95)		9,367.96	9,509.14	(28.19)	
GNMA	General Fund	7.50	03/28/91	11/20/19	10,395.42	10,435.96			(381.79)		10,013.63	10,055.19	1.02	
GNMA	General Fund	8.19	03/28/91	02/20/16	14,744.20	14,985.86			(1,788.91)		12,955.29	13,164.26	(32.69)	
GNMA	General Fund	8.75	04/29/91	02/20/20	37,749.07	38,792.83			(23,083.53)		14,665.54	14,740.92	(968.38)	
GNMA	General Fund	8.19	04/29/91	04/20/16	21,937.10	22,265.28			(3,501.09)		18,436.01	18,611.15	(153.04)	
GNMA	General Fund	7.19	04/29/91	02/20/16	48,086.00	49,978.18			(5,992.13)		42,093.87	43,395.83	(590.22)	
GNMA	General Fund	6.19	04/29/91	04/20/16	32,980.96	34,421.57			(6,248.23)		26,732.73	28,160.26	(13.08)	
GNMA	General Fund	7.19	04/26/91	04/20/16	7,016.49	7,082.09			(1,818.95)		5,197.54	5,244.89	(18.25)	
GNMA	General Fund	8.75	04/26/91	01/20/20	45,721.30	50,704.01			(1,494.27)		44,227.03	48,278.23	(931.51)	
GNMA	General Fund	6.19	10/23/92	09/20/17	56,250.75	59,375.48			(5,599.74)		50,651.01	53,957.00	181.26	
GNMA	General Fund	8.19	11/23/92	01/20/17	4,217.32	4,234.65			(618.55)		3,598.77	3,614.28	(1.82)	
GNMA	General Fund	7.19	10/30/92	08/20/17	62,254.35	65,865.72			(6,026.05)		56,228.30	59,126.87	(712.80)	
GNMA	General Fund	6.00	10/30/92	09/20/17	49,695.74	50,120.64			(3,613.04)		46,082.70	46,924.63	417.03	
<b>General Fund Total</b>					<b>8,888,751.13</b>	<b>9,000,530.48</b>	<b>516,055.78</b>	<b>(803,509.59)</b>	<b>(293,639.60)</b>	<b>0.00</b>	<b>8,307,657.72</b>	<b>8,399,695.29</b>	<b>(19,741.78)</b>	<b>0.00</b>
Repo Agmt	Housing Trust Fund	0.03	02/28/14	03/03/14	83,498.52	83,498.52	40,418.90				123,917.42	123,917.42		
Repo Agmt	Housing Trust Fund	0.03	02/28/14	03/03/14	4,610.73	4,610.73	51.97				4,662.70	4,662.70		
Repo Agmt	Housing Trust Fund	0.03	02/28/14	03/03/14	177,519.09	177,519.09	71,346.91				248,866.00	248,866.00		
Repo Agmt	Housing Trust Fund	0.03	02/28/14	03/03/14	348,815.64	348,815.64	0.00				348,815.64	348,815.64		
Repo Agmt	Housing Trust Fund	0.03	02/28/14	03/03/14	853,245.24	853,245.24	0.00				853,245.24	853,245.24		
Repo Agmt	General Revenue Appn	0.03	02/28/14	03/03/14	97,697.51	97,697.51	118.88				97,816.39	97,816.39		
Repo Agmt	General Revenue Appn	0.03	02/28/14	03/03/14	112,004.49	112,004.49	170,993.64				282,998.13	282,998.13		
Repo Agmt	General Revenue Appn	0.03	02/28/14	03/03/14	435,770.11	435,770.11	356,808.21				792,578.32	792,578.32		
Repo Agmt	General Revenue Appn	0.03	02/28/14	03/03/14	54,658.69	54,658.69	18,855.12				73,513.81	73,513.81		
Repo Agmt	Housing Trust Fund-GR	0.03	02/28/14	03/03/14	808,809.09	808,809.09		(659,747.68)			149,061.41	149,061.41		
Repo Agmt	Housing Trust Fund-GR	0.03	02/28/14	03/03/14	1,379,000.00	1,379,000.00	91,864.84				1,470,864.84	1,470,864.84		
Repo Agmt	Bootstrap -GR	0.03	02/28/14	03/03/14	83,342.08	83,342.08	0.00				83,342.08	83,342.08		
Repo Agmt	Bootstrap -GR	0.03	02/28/14	03/03/14	1,243,953.67	1,243,953.67		(325,611.54)			918,342.13	918,342.13		
Repo Agmt	Bootstrap -GR	0.03	02/28/14	03/03/14	1,800,000.00	1,800,000.00		(743,266.70)			1,056,733.30	1,056,733.30		
Repo Agmt	Contract for Deed Conversion	0.03	02/28/14	03/03/14	474,000.00	474,000.00		(6,500.00)			467,500.00	467,500.00		
<b>Housing Trust Fund Total</b>					<b>7,956,924.86</b>	<b>7,956,924.86</b>	<b>750,458.47</b>	<b>(1,735,125.92)</b>	<b>0.00</b>	<b>0.00</b>	<b>6,972,257.41</b>	<b>6,972,257.41</b>	<b>0.00</b>	<b>0.00</b>
Repo Agmt	Multi Family	0.03	02/28/14	03/03/14	1,057,125.54	1,057,125.54		(16,311.76)			1,040,813.78	1,040,813.78		
Repo Agmt	Multi Family	0.03	02/28/14	03/03/14	575,501.63	575,501.63	72,109.31				647,610.94	647,610.94		
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/28/14	03/03/14	5,618,158.63	5,618,158.63	1,495,082.77				7,113,241.40	7,113,241.40		
<b>Compliance Total</b>					<b>7,250,785.80</b>	<b>7,250,785.80</b>	<b>1,567,192.08</b>	<b>(16,311.76)</b>	<b>0.00</b>	<b>0.00</b>	<b>8,801,666.12</b>	<b>8,801,666.12</b>	<b>0.00</b>	<b>0.00</b>
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/28/14	03/03/14	494,970.62	494,970.62	205,166.03				700,136.65	700,136.65		
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/28/14	03/03/14	7,411,159.42	7,411,159.42		(365,767.94)			7,045,391.48	7,045,391.48		
Repo Agmt	Low Income Tax Credit Prog.	0.03	02/28/14	03/03/14	385,091.77	385,091.77		(3,767.00)			381,324.77	381,324.77		
<b>Low Income Tax Credit Prog. Total</b>					<b>8,291,221.81</b>	<b>8,291,221.81</b>	<b>205,166.03</b>	<b>(369,534.94)</b>	<b>0.00</b>	<b>0.00</b>	<b>8,126,852.90</b>	<b>8,126,852.90</b>	<b>0.00</b>	<b>0.00</b>
<b>Total Investment Summary</b>					<b>32,387,683.60</b>	<b>32,499,462.95</b>	<b>3,038,872.36</b>	<b>(2,924,482.21)</b>	<b>(293,639.60)</b>	<b>0.00</b>	<b>32,208,434.15</b>	<b>32,300,471.72</b>	<b>(19,741.78)</b>	<b>0.00</b>

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**BOARD REPORT ITEM**  
**BOND FINANCE DIVISION**  
**MAY 8, 2014**

**REPORT ITEM**

Report on the Department's 2<sup>nd</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures.

**BACKGROUND**

- The Department's Investment Policy, was revised and approved at the Board Meeting of April 11, 2013, to exclude funds invested under a bond trust indenture for the benefit of bond holders because each trust indenture controls the authorized investments under that particular trust indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It shows in detail the types of investments, their maturity, their carrying (face amount) value and their fair value at the beginning and end of the quarter.
- The detail for investment activity can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.
- Overall, the portfolio carrying value decreased by \$31 million (See Page 1 of the attached Bond Trust Indenture Internal Management Report) for a total of \$923,364,297. The decrease is accounted for by loan repayments and bond redemptions.

The portfolio consists of those investments described on page 2 of the attached Bond Trust Indenture Internal Management Report.

	<b><u>Beginning Quarter</u></b>	<b><u>Ending Quarter</u></b>
<b>Mortgage Backed Securities (MBS)</b>	88%	88%
<b>Guaranteed Investment Contract/ Investment Agreement (GIC/IA)</b>	5%	3%
<b>Repurchase Agreements</b>	3%	5%
<b>Money Markets and Mutual Funds</b>	4%	4%

The 2% increase in Repurchase Agreements and 2% decrease in GIC/IA and money market/mutual funds is a result of withdrawal of funds from investment agreements on February 28, 2014, and investment in overnight repurchase agreements for pending Single Family debt service payment due on March 1, 2014.

The portfolio activity for the quarter:

- The maturities in MBS this quarter were \$36 million which represents loan repayments or payoffs. The table below shows the trend in new loans and loan payoffs.

	<b>2nd Qtr</b>	<b>3rd Qtr</b>	<b>4th Qtr</b>	<b>1st Qtr</b>	<b>2nd Qtr</b>	
	<b>FY 13</b>	<b>FY 13</b>	<b>FY 13</b>	<b>FY 14</b>	<b>FY 14</b>	<b>Total</b>
Purchases	67,382,866	40,975	3,109,759	-	-	70,533,600
Sales	167,804,707	-	-	20,238,887	-	188,043,594
Maturities	44,354,858	49,028,604	64,711,331	45,617,217	36,063,849	239,775,859


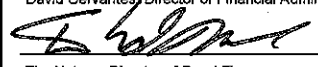
- The process of valuing investments at fair value (market value) identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department does not typically liquidate these investments (mortgage backed securities) but holds them until maturity.
- The fair value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) increased \$3.8 million (See Pages 1 and 2), increasing the difference between fair value and carrying value (the Department's acquisition cost of its financial instruments net of amortization) with fair value being greater than the carrying value. The national average for a 30-year fixed mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of February 28, 2014, was 4.37%, up from 4.29% at the end of November 2013. There are various factors that affect the fair value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.
- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of the overall change in the bond market as a whole.
- The ability of our investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is more important than their relative value in the bond market as a whole.
- The more relevant measures of indenture parity, projected future cash flows, and the comparison of current interest income to interest expense are reported on page 3 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indentures with assets greater than liabilities in a range from 99.52% to 131.80% which would indicate the Department has sufficient assets to meet its obligations. The interest comparison reflects interest income greater than interest expense and indicates a positive cash flow.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Internal Management Report  
 Quarter Ending February 28, 2014

Summary statement of each pooled fund group:

INDENTURE	FAIR VALUE	CARRYING	ACCRETION/ PURCHASES	CHANGE IN CARRYING VALUE			CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED
	(MARKET) @ 11/30/13	VALUE @ 11/30/13		AMORTIZATION/ SALES	MATURITIES	TRANSFERS		VALUE @ 02/28/14	(MARKET) @ 02/28/14	IN FAIR VALUE (MARKET)	
Single Family	572,465,516.55	530,178,198.49	29,873,153.90	(19,083,534.78)	(22,754,831.72)	0.00	518,212,985.89	562,680,057.78	2,179,753.83	1,958,671.61	0.00
RMRB	349,158,335.84	330,055,765.41	1,135,037.87	(3,068,880.71)	(12,978,168.49)	0.00	315,143,954.08	336,005,547.97	1,759,023.46	1,145,133.37	0.00
CHMRB	6,260,484.59	5,665,978.75	21,232.64	(115,308.74)	(195,758.34)	0.00	5,376,144.31	5,885,288.14	(85,364.01)	28,755.89	0.00
Taxable Mortgage Program	9,153,879.16	9,097,610.12	885,064.54	0.00	(30,856.78)	0.00	9,951,817.88	10,075,620.26	67,533.34	17,843.21	0.00
Multi Family	81,476,475.07	79,845,767.54	4,711,475.84	(9,773,615.12)	(104,233.38)	0.00	74,679,394.88	76,255,959.40	(54,143.01)	0.00	0.00
<b>TOTAL</b>	<b>1,018,514,691.21</b>	<b>954,843,320.31</b>	<b>36,625,964.79</b>	<b>(32,041,139.35)</b>	<b>(36,063,848.71)</b>	<b>0.00</b>	<b>923,364,297.04</b>	<b>990,902,471.55</b>	<b>3,866,803.61</b>	<b>3,150,404.08</b>	<b>0.00</b>

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:  
 Tim Nelson completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 10, 2014  
 David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 16, 2013



	Date <u>4/23/14</u>
David Cervantes, Director of Financial Administration	
	Date <u>4-22-14</u>
Tim Nelson, Director of Bond Finance	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Internal Management Report  
 Quarter Ending February 28, 2014

Summary statement of each pooled investment group:

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 11/30/13	CARRYING VALUE @ 11/30/13	ACCRETION/ PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 02/28/14	FAIR VALUE (MARKET) @ 02/28/14	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
<b>INDENTURE RELATED:</b>										
Mortgage-Backed Securities	902,889,778.30	839,218,407.40	0.00	0.00	(36,063,848.71)	0.00	803,154,558.69	870,692,733.20	3,866,803.61	0.00
Guaranteed Inv Contracts	36,921,654.96	36,921,654.96	3,477,145.88	(11,767,833.57)	0.00	0.00	28,630,967.27	28,630,967.27	-	0.00
Investment Agreements	8,750,318.48	8,750,318.48	0.00	(7,355,591.04)	0.00	0.00	1,394,727.44	1,394,727.44	-	0.00
Treasury-Backed Mutual Funds	41,948,701.85	41,948,701.85	4,711,475.84	(9,158,422.81)	0.00	0.00	37,501,754.88	37,501,754.88	-	0.00
Repurchase Agreements	28,004,237.62	28,004,237.52	28,437,343.07	(3,759,291.93)	0.00	0.00	52,682,288.76	52,682,288.76	0.00	0.00
<b>TOTAL</b>	<b>1,018,514,681.21</b>	<b>954,843,320.31</b>	<b>36,625,964.79</b>	<b>(32,041,139.35)</b>	<b>(36,063,848.71)</b>	<b>0.00</b>	<b>923,364,297.04</b>	<b>990,902,471.55</b>	<b>3,866,803.61</b>	<b>0.00</b>

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	Date 4/23/14
David Cervantes, Director of Financial Administration	
	Date 4-22-14
Tim Nelson, Director of Bond Finance	



**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Executive Summary**  
As of February 28, 2014

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Taxable Mortgage Program	Multi-Family Indenture Funds	Combined Totals
<b>PARITY COMPARISON:</b>						
PARITY ASSETS						
Cash	\$ 81,821	\$ -	\$ -		\$ 19,254,808	\$ 19,336,629
Investments <sup>(1)</sup>	\$ 64,408,524	\$ 12,272,340	\$ 431,445	\$ 4,139,362	\$ 72,879,314	\$ 154,130,985
Mortgage Backed Securities <sup>(1)</sup>	\$ 455,320,459	\$ 303,063,721	\$ 4,945,492	\$ 5,812,456	\$ -	\$ 769,142,128
Loans Receivable <sup>(2)</sup>	\$ 2,452,457				\$ 1,011,892,918	\$ 1,014,345,375
Accrued Interest Receivable	\$ 1,971,872	\$ 1,145,133	\$ 28,755	\$ 10,544	\$ 8,907,771	\$ 12,064,075
<b>TOTAL PARITY ASSETS</b>	<b>\$ 524,235,132</b>	<b>\$ 316,481,194</b>	<b>\$ 5,405,692</b>	<b>\$ 9,962,362</b>	<b>\$ 1,112,934,811</b>	<b>\$ 1,969,019,192</b>
PARITY LIABILITIES						
Bonds Payable <sup>(1)</sup>	\$ 474,115,000	\$ 285,435,000	\$ 4,100,000		\$ 1,012,073,555	\$ 1,775,723,555
Accrued Interest Payable	\$ 9,746,030	\$ 1,723,696	\$ 1,550		\$ 9,003,457	\$ 20,474,733
Other Non-Current Liabilities <sup>(3)</sup>					\$ 97,179,938	\$ 97,179,938
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 483,861,030</b>	<b>\$ 287,158,696</b>	<b>\$ 4,101,550</b>	<b>\$ -</b>	<b>\$ 1,118,256,950</b>	<b>\$ 1,893,378,226</b>
PARITY DIFFERENCE	\$ 40,374,102	\$ 29,322,498	\$ 1,304,142	N/A	\$ (5,322,138)	\$ 75,640,966
<b>PARITY</b>	<b>108.34%</b>	<b>110.21%</b>	<b>131.80%</b>	<b>N/A</b>	<b>99.52%</b>	<b>104.00%</b>

**INTEREST COMPARISON For the *sixth* Fiscal Month Only (not Fiscal Year to Date) :**

INTEREST INCOME						
Interest & Investment Income	\$ 2,204,040	\$ 1,155,618	\$ 30,499	\$ -	\$ 3,797,262	\$ 7,187,419
<b>TOTAL INTEREST INCOME</b>	<b>\$ 2,204,040</b>	<b>\$ 1,155,618</b>	<b>\$ 30,499</b>	<b>\$ -</b>	<b>\$ 3,797,262</b>	<b>\$ 7,187,419</b>
INTEREST EXPENSE						
Interest on Bonds	\$ 1,607,196	\$ 849,832	\$ 21,281	\$ -	\$ 3,797,272	\$ 6,275,581
<b>TOTAL INTEREST EXPENSE</b>	<b>\$ 1,607,196</b>	<b>\$ 849,832</b>	<b>\$ 21,281</b>	<b>\$ -</b>	<b>\$ 3,797,272</b>	<b>\$ 6,275,581</b>
NET INTEREST	\$ 596,844	\$ 305,786	\$ 9,218	N/A	\$ (10)	\$ 911,838
<b>INTEREST RATIO</b>	<b>137.14%</b>	<b>135.98%</b>	<b>143.32%</b>	<b>N/A</b>	<b>100.00%</b>	<b>114.53%</b>

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value.

This adjustment is consistent with indenture cashflows prepared for rating agencies.

(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

R3

## TDHCA Outreach Activities, April 2014

*A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public*

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
State Independent Living Council Meeting and Conference	Corpus Christi	March 29-April 1	Housing Resource Center	Participant
Lender Training/Highlands Residential Mortgage	Austin	April 1	Homeownership	Training
City of Austin/Community Services Block Grant Training	Austin	April 1	Community Affairs	Training
Combined Community Action/CSBG Project on Assessment and Case Management	Giddings	April 2	Community Affairs	Training
First Thursday Income Eligibility Training	Austin	April 3	Compliance	Training
Single Family Programs Roundtable	Austin	April 4	HOME, Housing Trust Fund, Neighborhood Stabilization, and Office of Colonia Initiatives	Roundtable Hearing
Neighborhood Presidents Meeting	San Antonio	April 8	Multifamily and Fair Housing	Presentation
TDHCA Customer Service Survey	Austin	April 8-May 2	Housing Resource Center	Administrator
Association of Nationally Certified ROMA Trainers Conference	Little Rock, AR	April 8-10	Community Affairs	Participant
Public Hearing/2014 Housing Tax Credit Applications	Lubbock	April 9	Multifamily	Public Hearing
New Lender Program Overview – Webinar/Bridgeview Bank Mortgage	Austin	April 9	Homeownership	Training
Travis County/TBRA for Persons with Disabilities Training	Austin	April 10	HOME	Training
Houston Black Real Estate Association – Houston Home Expo	Houston	April 12	Homeownership	Panelist, Presentation
Public Hearing/2014 Housing Tax Credit Applications	Harlingen	April 15	Multifamily	Public Hearing
Concho Valley CAA/CSBG Project on Assessment and Case Management	San Angelo	April 15	Community Affairs	Training
Housing and Health Services Coordination Council Meeting	Austin	April 16	Housing Resource Center	Participant
Public Hearing/2014 Housing Tax Credit Applications	El Paso	April 16	Multifamily	Public Hearing
Fairway Independent Mortgage/MCC Program – Webinar	Austin	April 16	Homeownership	Training
TAAHP Quarterly Luncheon	Houston	April 17	Executive	Participant
Public Hearing/2014 Housing Tax Credit Applications	Dallas	April 17	Multifamily	Public Hearing
Promoting Independence Advisory Committee Meeting	Austin	April 17	Housing Resource Center	Participant
Public Hearing/2014 Housing Tax Credit Applications	Houston	April 17	Multifamily	Public Hearing
Community Council of South Central Texas/Board Training	Seguin	April 17	Community Affairs	Board Training
Regional LIHEAP Grantee Training Workshop	Seattle, WA	April 21-24	Community Affairs	Participant
Public Hearing/2014 Housing Tax Credit Applications	Austin	April 23	Multifamily	Public Hearing

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
Wells Fargo Special Programs Webinar	Austin	April 23	Homeownership	Presentation
Disability Advisory Workgroup Meeting	Austin	April 24	Housing Resource Center	Participant
HUD Community Planning and Development Meeting	Fort Worth	April 25	Community Affairs	Participant
Council for the Prevention and Treatment of Mental Health and Substance Use Disorders	Austin	April 25	Housing Resource Center	Participant
Galveston County CAC, CAC of Victoria Texas, SE Tx Regional Planning Commission, Gulf Coast Community Services Assoc./ Community Services Block Grant Training	Galveston	April 30	Community Affairs	Training

## **Internet Postings of Note, April 2014**

*A list of new or noteworthy documents posted to the Department's web site*

**List of Quantifiable Community Participation Letters Received for 2014 Competitive Housing Tax Credit Applications** — *listing letters received and under review for points under the QCP criterion in the QAP:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**Annual Internal Audit Report for Fiscal Year 2013** — *reporting on activities of the Department's Internal Audit Division, in addition to outlining the Division's work plan for Fiscal Year 2014:*  
[www.tdhca.state.tx.us/internal-audit.htm](http://www.tdhca.state.tx.us/internal-audit.htm)

**Letters received from State Representatives for Points** — *detailing input from State Representatives for specific applications in the 2014 Housing Tax Credit allocation cycle for points under §11.9(d)(5) of the QAP:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**What is Affordable Housing** — *PowerPoint presentation with narration providing basic consumer information on affordable housing, with a specific emphasis on the Housing Tax Credit Program:*  
[www.tdhca.state.tx.us/multifamily/communities.htm](http://www.tdhca.state.tx.us/multifamily/communities.htm)

**Local Government Support for Points** — *detailing input from units of local government for specific applications in the 2014 Housing Tax Credit allocation cycle for points under §11.9(d)(1) of the QAP:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**2014 HOME Multifamily Development Program: Application Log** — *providing specific information regarding applications seeking Multifamily HOME funds to layer with 9% Housing Tax Credits:*  
[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**2014 Community Services Block Grant Allocation** — *detailing specific funding amounts for fiscal year 2014 to entities administering the Department's CSBG Program:*  
[www.tdhca.state.tx.us/community-affairs/csbg/index.htm](http://www.tdhca.state.tx.us/community-affairs/csbg/index.htm)

**2014 Comprehensive Energy Assistance Program Subrecipient List** — *updating the list of and contact information for entities currently administrating CEAP funds under this program:*  
[www.tdhca.state.tx.us/community-affairs/ceap/index.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm)

**2013 Emergency Solutions Grant Program Awards** — *updating the funding amounts to and service areas of entities currently administrating ESG funds under this program:*  
[www.tdhca.state.tx.us/community-affairs/esgp/index.htm](http://www.tdhca.state.tx.us/community-affairs/esgp/index.htm)

**2014 Investment and Interest Rate Swap Policies** — *detailing guidelines for the use and management of all interest rate agreements:*

[www.tdhca.state.tx.us/bond-finance/index.htm](http://www.tdhca.state.tx.us/bond-finance/index.htm)

**2014 Report on the Manufactured Housing Division's Titling Process: 4/8/14** — *evaluating the performance of the Manufactured Housing Division in processing, issuing, and tracking of Statements of Ownership and Location:*

[www.tdhca.state.tx.us/internal-audit.htm](http://www.tdhca.state.tx.us/internal-audit.htm)

**Guide to the ADA Standards** — *linking to a site which features information developing and updating design requirements for the construction and alteration of facilities subject to the Americans with Disabilities Act (links to United States Access Board website):*

<http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards>

# **ACTION ITEMS**

2

**BOARD REPORT ITEM**

**INTERNAL AUDIT**

**MAY 08, 2014**

Report from the Audit Committee Meeting.

**REPORT ITEM**

Verbal report.



3

**BOARD ACTION REQUEST**

**BOND FINANCE DIVISION**

**MAY 8, 2014**

Presentation, Discussion, and Possible Action on Resolution No. 14-029 authorizing the Restructuring of Interest Rate Swap Transaction with Respect to Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D

**RECOMMENDED ACTION**

Resolved, that Resolution No. 14-029 is hereby adopted in the form presented to this meeting.

**BACKGROUND**

In October 2004, the Texas Department of Housing and Community Affairs (the “Department”), in conjunction with the closing of its Single Family Variable Rate Mortgage Revenue Bonds, Series 2004D entered into an interest rate swap agreement (the “2004 Swap”) with Goldman Sachs Bank.

Department staff, in consultation with the Department’s Co-Bond Counsel (Bracewell & Giuliani) and Financial Adviser/Swap Advisor (George K. Baum), analyzed three restructuring alternatives:

- Partial Refunding of the Series 2004D Bonds (“Refunding”).
- Partial Sale of Mortgage-Backed Securities (“MBS”) pledged to the Series 2004D Bonds.
- Restructuring of swap optional par termination rights with Goldman Sachs Bank.

The refunding and the MBS sale would result in a net increase in costs; the swap restructure is anticipated to result in net savings to the Department.

Department staff, in consultation with the Department’s Co-Bond Counsel (Bracewell & Giuliani and Bates and Coleman) and Financial Adviser/Swap Advisor (George K. Baum) prepared a term sheet outlining the key terms of the 2004 Swap – basically the original swap terms with adjusted optional par termination rights. In addition, the Department reiterated that any successful restructure of the 2004 Swap would need to agree to no substantive changes to the Department’s obligations as a condition to acceptance. That term sheet, which was based on qualifications consistent with the requirements of the Department’s Swap Policy in effect at the time, was circulated to our current swap provider Goldman Sachs Bank.

On Wednesday, March 10, 2014, George K. Baum, as the Department's advisor, received an offer from the Goldman Sachs Bank. Goldman Sachs Bank bid for restructuring the optionality in this swap results in a lower overall cost to the Department. Please see the attached Report from the Director of Bond Finance and the resolution prepared by the Department's Bond Counsel, Bracewell & Giuliani, for additional details related to the proposed swap restructure.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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**Memorandum**

**To:** Timothy K. Irvine, Executive Director  
**From:** Timothy Earl Nelson, Director of Bond Finance  
**CC:** Tom Gouris, Deputy Executive Director of Asset Analysis and Management  
**Date:** May 1, 2014  
**Subject:** Report of the Director of Bond Finance Regarding Single Family 2004D Swap Restructure with Goldman Sachs

Pursuant to Section XIV of the Department's Swap Policy dated April 10, 2014, the Department will determine that the swap transaction will conform to this Interest Rate Swap Policy after reviewing a report of the Director of Bond Finance that identifies with respect to the transaction:

**Purpose**

The Department desires to restructure the Single Family 2004D swap contract in order to provide more optional par termination rights.

**Anticipated economic benefit and the method used to determine the anticipated benefit**

Estimated net economic benefit (net of all costs) = \$614,000 which is the present value (at 4%) of the rate reduction minus the maximum estimated costs of restructuring of \$300,000; plus, up to an additional \$255,000 present value (the remaining unused subparagraph 2A amount that the IRS rules allow the Department to retain) – such amount to be realized over time and is dependent upon the swap management decisions undertaken by staff. Finally, there is an estimated savings the Department will realize at the time that the swap is completely cancelled (in March of 2021) of approximately \$600,000.

**Use of the receipts of the transaction**

To pay the interest on the Series 2004D variable rate bonds.

**Notional amount, amortization, and average life compared to the related obligation**

2004D Notional Amount = \$35,000,000

Amortization and average life compared to the prior swap contract have been changed in order to shorten the average life. Please see the attached schedule for more detail. The par termination options for the Department have been adjusted to more closely match the anticipated optionally required.



**Floating indices**

Lesser of (the greater of 65% of LIBOR and 56% of LIBOR + .45%) and LIBOR. While the index used to determine the amount that the Department would receive from the counterparty has not changed, the amount the Department will pay is expected to be reduced by over 50 bp's.

**Effective date and duration**

The swap will be effective beginning June 1, 2014. The duration has been shortened; please see the attached schedule. The final termination date for the 2004D swap is March 1, 2035.

**Identity and credit rating of the counterparties**

The swap counterparty is Goldman Sachs Bank. Current rating is A2/stable outlook by Moody's, A/negative outlook by S&P, and A/stable outlook by Fitch.

**Cost and anticipated benefit of transaction insurance**

Not applicable.

**Financial advisors and the legal advisors and their fees**

Financial Advisor– George K. Baum & Co. (\$43,750)  
Swap Advisor– George K. Baum & Co. (\$43,750)  
Cash Flow Analyst – George K. Baum & Co. (\$43,750)  
Bond Counsel – Bracewell & Giuliani (\$100,000)  
Co-Bond Counsel – Bates & Coleman (\$7,500)

**Security for scheduled and early termination payments**

The security for all payments made under the swap contract will be a subordinate pledge of assets under the Department's Single Family Mortgage Revenue Bond Indenture.

**Associated risks and risk mitigation features**

The new swap contract has all of the same risks that the prior swap contract contained. All of the prior risk mitigation strategies are available to the Department.

**Early termination provisions**

The new swap contract has additional optional par termination rights for the Department; please see the attached schedule.

**TDHCA  
2004D**

**Notional Schedule - Original Confirmation**

Period Start Date	Period End Date	Outstanding Notional	Minimum Outstanding Notional
1/1/2005	9/1/2014	35,000,000	-
9/1/2014	3/1/2015	34,445,000	13,778,000
3/1/2015	9/1/2015	33,875,000	13,550,000
9/1/2015	3/1/2016	33,290,000	13,316,000
3/1/2016	9/1/2016	32,690,000	13,076,000
9/1/2016	3/1/2017	32,075,000	12,830,000
3/1/2017	9/1/2017	31,445,000	12,578,000
9/1/2017	3/1/2018	30,795,000	12,318,000
3/1/2018	9/1/2018	30,130,000	12,052,000
9/1/2018	3/1/2019	29,445,000	11,778,000
3/1/2019	9/1/2019	28,745,000	11,498,000
9/1/2019	3/1/2020	28,025,000	11,210,000
3/1/2020	9/1/2020	27,285,000	10,914,000
9/1/2020	3/1/2021	26,525,000	10,610,000
3/1/2021	9/1/2021	25,745,000	10,298,000
9/1/2021	3/1/2022	24,940,000	9,976,000
3/1/2022	9/1/2022	24,115,000	9,646,000
9/1/2022	3/1/2023	23,240,000	9,296,000
3/1/2023	9/1/2023	21,850,000	-
9/1/2023	3/1/2024	20,480,000	-
3/1/2024	9/1/2024	19,135,000	-
9/1/2024	3/1/2025	17,845,000	-
3/1/2025	9/1/2025	16,745,000	-
9/1/2025	3/1/2026	15,705,000	-
3/1/2026	9/1/2026	14,705,000	-
9/1/2026	3/1/2027	13,725,000	-
3/1/2027	9/1/2027	12,770,000	-
9/1/2027	3/1/2028	11,835,000	-
3/1/2028	9/1/2028	10,910,000	-
9/1/2028	3/1/2029	10,010,000	-
3/1/2029	9/1/2029	9,125,000	-
9/1/2029	3/1/2030	8,260,000	-
3/1/2030	9/1/2030	7,410,000	-
9/1/2030	3/1/2031	6,580,000	-
3/1/2031	9/1/2031	5,770,000	-
9/1/2031	3/1/2032	4,975,000	-
3/1/2032	9/1/2032	4,200,000	-
9/1/2032	3/1/2033	3,440,000	-
3/1/2033	9/1/2033	2,700,000	-
9/1/2033	3/1/2034	1,980,000	-
3/1/2034	9/1/2034	1,280,000	-
9/1/2034	3/1/2035	615,000	-
3/1/2035	9/1/2035	-	-

**Novated and Restructured on June 1, 2014**

Period Start Date	Maximum Outstanding Notional	Additional Notional	Minimum Outstanding Notional	Additional Optionality
6/1/2014	35,000,000		35,000,000	
9/1/2014	33,165,000	(1,280,000)	33,165,000	(19,387,000)
3/1/2015	31,985,000	(1,890,000)	27,485,000	(13,935,000)
9/1/2015	30,995,000	(2,295,000)	26,635,000	(13,319,000)
3/1/2016	30,010,000	(2,680,000)	25,790,000	(12,714,000)
9/1/2016	29,040,000	(3,035,000)	20,955,000	(8,125,000)
3/1/2017	28,075,000	(3,370,000)	20,260,000	(7,682,000)
9/1/2017	27,120,000	(3,675,000)	19,570,000	(7,252,000)
3/1/2018	26,170,000	(3,960,000)	15,785,000	(3,733,000)
9/1/2018	25,230,000	(4,215,000)	15,215,000	(3,437,000)
3/1/2019	24,300,000	(4,445,000)	14,655,000	(3,157,000)
9/1/2019	23,375,000	(4,650,000)	11,325,000	(1,15,000)
3/1/2020	22,460,000	(4,825,000)	10,885,000	29,000
9/1/2020	21,550,000	(4,975,000)	10,440,000	170,000
3/1/2021	20,650,000	(5,095,000)	10,010,000	288,000
9/1/2021	19,760,000	(5,180,000)	-	9,976,000
3/1/2022	18,880,000	(5,235,000)	-	9,646,000
9/1/2022	18,005,000	(5,235,000)	-	9,296,000
3/1/2023	17,145,000	(4,705,000)	-	-
9/1/2023	16,325,000	(4,155,000)	-	-
3/1/2024	15,545,000	(3,590,000)	-	-
9/1/2024	14,785,000	(3,060,000)	-	-
3/1/2025	14,045,000	(2,700,000)	-	-
9/1/2025	13,315,000	(2,390,000)	-	-
3/1/2026	12,590,000	(2,115,000)	-	-
9/1/2026	11,870,000	(1,855,000)	-	-
3/1/2027	11,155,000	(1,615,000)	-	-
9/1/2027	10,450,000	(1,385,000)	-	-
3/1/2028	9,750,000	(1,160,000)	-	-
9/1/2028	9,050,000	(960,000)	-	-
3/1/2029	8,360,000	(765,000)	-	-
9/1/2029	7,670,000	(590,000)	-	-
3/1/2030	6,990,000	(420,000)	-	-
9/1/2030	6,315,000	(265,000)	-	-
3/1/2031	5,640,000	(130,000)	-	-
9/1/2031	4,970,000	(5,000)	-	-
3/1/2032	4,310,000	110,000	-	-
9/1/2032	3,655,000	215,000	-	-
3/1/2033	3,010,000	310,000	-	-
9/1/2033	2,365,000	385,000	-	-
3/1/2034	1,760,000	480,000	-	-
9/1/2034	1,260,000	645,000	-	-
3/1/2035	-	-	-	-

Average Life\*: **10.805**      3.214  
Duration @ 3.6375%: **8.652**      2.811  
\* from 6/1/2014

**9.437**      3.995  
**7.570**      3.649

## RESOLUTION NO. 14-029

RESOLUTION APPROVING RESTRUCTURING OF INTEREST RATE SWAP TRANSACTION WITH RESPECT TO SINGLE FAMILY VARIABLE RATE MORTGAGE REVENUE BONDS, 2004 SERIES D; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Department has issued from time to time various series of its Single Family Mortgage Revenue Bonds pursuant to the Single Family Mortgage Revenue Bond Trust Indenture dated as of October 1, 1980 (as heretofore amended and supplemented, the "Single Family Indenture") between the Department, as successor to the Texas Housing Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"); and

WHEREAS, the Department has previously issued its Single Family Variable Rate Mortgage Revenue Bonds, 2004 Series D (the "2004 Series D Bonds") pursuant to the Single Family Indenture and the Thirty-Ninth Supplemental Single Family Mortgage Revenue Bond Trust Indenture dated as of October 1, 2004, as amended by the First Amendment to Thirty-Ninth Supplemental Single Family Mortgage Revenue Bond Trust Indenture dated June 30, 2009, each between the Department and the Trustee (collectively, the "Thirty-Ninth Supplemental Indenture"); and

WHEREAS, contemporaneously with the issuance of the 2004 Series D Bonds, the Department entered into an interest rate swap transaction with Goldman Sachs Bank USA, successor to Goldman Sachs Capital Markets, L.P. ("GSB"), with respect to the 2004 Series D Bonds (the "2004D Swap"); and

WHEREAS, the staff of the Department has recommended that the 2004D Swap be restructured to change its amortization and optionality; and

WHEREAS, the Governing Board has determined that it is in the best interests of the Department to restructure the 2004D Swap with GSB, and in connection therewith, modify the amortization and optionality of the 2004D Swap and adjust the fixed interest rate (the "Fixed Rate") payable by the Department thereunder (such restructured interest rate swap transaction is referred to herein as the "New 2004D Swap"); and

WHEREAS, pursuant to the Act and Chapter 1371, Texas Government Code, as amended, in connection with the New 2004D Swap, the Governing Board desires to authorize the execution of a Second Revised Confirmation (the "2004D Swap Document") in substantially the form attached hereto; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed \$300,000 of Department funds to pay costs of restructuring the 2004D Swap; and

WHEREAS, the Governing Board desires to approve taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

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

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval of New 2004D Swap and 2004D Swap Document. The New 2004D Swap is hereby authorized and approved. In connection therewith, the form and substance of the 2004D Swap Document are hereby approved, and the Authorized Representatives are hereby severally directed and authorized, in the name and on behalf of the Department, to execute and deliver, and, if requested, affix the seal of the Department to, the 2004D Swap Document. The Authorized Representative executing the 2004D Swap Document shall approve the Fixed Rate applicable to the New 2004D Swap, provided that such Fixed Rate shall not exceed 3.6375% per annum.

Section 1.2 Execution and Delivery of Other Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, 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 1.3 Power to Revise Form of Documents. 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 & Giuliani LLP and Bates & Coleman, P.C., Co-Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.4 Exhibits Incorporated Herein. All of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit A - 2004D Swap Document

Section 1.5 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 Governing Board, the Executive Director of the Department, the Director of Bond Finance of the Department, the Director of Texas Homeownership of the Department, the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

Section 1.6 Ratification of Submission to the Attorney General of Texas. The Governing Board hereby ratifies the submission by the Department's Bond Counsel to the Attorney General of Texas, for his approval, of the transcript of the legal proceedings authorizing the restructuring of the 2004D Swap.

Section 1.7 Authorization to Pay Costs. The Governing Board hereby authorizes the contribution of Department funds in an amount not to exceed \$300,000 to pay certain costs of restructuring the 2004D Swap.



Section 1.8 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the restructuring the 2004D Swap are hereby ratified and confirmed.

## ARTICLE 2

### GENERAL PROVISIONS

Section 2.1 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 § 2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[EXECUTION PAGE FOLLOWS]

PASSED AND APPROVED this 8<sup>th</sup> day of May, 2014.

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

(SEAL)

4

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**MAY 8, 2014**

Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under any of the Department's Program or Underwriting Rules

**RECOMMENDED ACTION**

**WHEREAS**, a Competitive Housing Tax Credit Application (the "Application") was submitted for Louis Manor (#14031) on February 28, 2014;

**WHEREAS**, the Development Site is located within 1,000 feet of a railway, significant presence of blighted structures, and criminal activity that rise to the level of frequent police reports, which, pursuant to §10.101(a)(4) of the Uniform Multifamily Rules ("Rules") related to Undesirable Area Features, would cause the site to be deemed ineligible;

**WHEREAS**, the Application was terminated on April 1, 2014; and

**WHEREAS**, the Applicant has timely requested an appeal of the termination

**NOW, therefore, it is hereby,**

**RESOLVED**, the Applicant's appeal of the termination of Louis Manor (#14031) is hereby denied.

**BACKGROUND**

An Application for Louis Manor, located in Port Arthur (urban region 5), was submitted on February 28, 2014. The application proposes rehabilitation of a development that has ongoing federal assistance from HUD in the form of a HAP contract, and the site is located approximately 40 feet from an active railway. Pursuant to §10.101(a)(3) of the Rules, Development Sites located within 300 feet of any number of undesirable site features, including active railroad tracks, will be considered ineligible unless the board grants an exemption for Rehabilitation Developments that have ongoing and existing federal assistance from HUD or USDA. Such an exemption was requested and granted at the March board meeting. However, at that meeting, the board also made it clear that the exemption was granted without prejudice with respect to §10.101(a)(4) of the Rules, related to Undesirable Area Features.

Section 10.101(a)(4) of the Rules states that a Development Site will be found ineligible if it is located within 1,000 feet of a confluence of a number of listed undesirable area features that are not typical of a high opportunity neighborhood. Staff evaluated the area immediately surrounding the site during a site visit conducted on March 18, 2014, and reviewed documentation submitted by the applicant as well. As

noted in the documentation surrounding the exemption request, the site is located adjacent to an active railway. As evidenced by the attached photographs taken during staff's site visit, there are a number of blighted structures within 1,000 feet of the site. While there is a new elementary school across the street from the development, staff found no visible evidence of any community revitalization or economic development efforts that would suggest that the many blighted structures would be repaired any time in the near future. Instead, staff, when comparing these current pictures to those at the same addresses on Google maps, found that some of the properties are in worse condition now than when the pictures were taken for the website.

Staff also reviewed information submitted by the Applicant with respect to crime in the area and found that, at Louis Manor alone, in the span of one year (2013) there were reported 38 assaults, 10 persons with a gun or weapon, 7 vice related activities, 4 shots fired, 3 drug overdoses, and 1 sexual assault, among a host of other crimes. All told there were 415 calls in 2013, which translates to 8 each week. While a letter from the Chief of Police in Port Arthur points to a nearby development as the source of a number of these disturbances, staff concluded that these figures represent significant criminal activity as contemplated in the Rules.

Staff further reviewed environmental issues that may be present due to the proximity of the site to oil and gas refineries as well as any history of significant or recurring flooding due to recent hurricanes that impacted the area. While these issues remain a general concern, they were not key elements in staff's determination.

The Applicant, in their appeal, states that because the median household income for the City of Port Arthur is low (\$30,957 according to the Applicant) and that a large number of persons in the area are low to very low income and minority populations, that there are very few neighborhoods in the city that could be considered high opportunity areas. Therefore, housing is *necessarily* located in "high minority concentrated, [high] poverty census tracts where some of the area features that are recognized in the [Rules] as undesirable typically exist." Staff generally disagrees with the idea that there are simply no good options with respect to site selection for housing tax credit developments. While it may be the case that the City of Port Arthur does not have many census tracts that have incomes in top two quartiles of median household income for the MSA and/or poverty rates below 15 percent for individuals, there are undoubtedly development sites in the city that are not located adjacent to a railway, near to a significant presence of blighted structures, and near to or within high levels of criminal activity.

The Applicant's appeal does not deny that these conditions exist but suggests that they are "working to mitigate those features where possible." With respect to the railway, the Applicant points to safety inspections and the lack of recent accidents as a mitigating factor, as well as the fact that HUD conducts its own environmental assessment and has continued to fund and support this project. However, none of these facts are compelling with respect to the mere existence of an active railway. Regarding blight in the immediate area, the Applicant acknowledges that 23% of structures within 1,000 feet of the development are in "visible, physical decline." While this statement is made in context of their appeal, staff contends that this is a relatively high percentage, especially when compared to typical sites in high opportunity neighborhoods.

In order to address the issue of criminal activity the Applicant argues in the appeal that there has been an overall decrease in the amount of criminal activity at the site and in the area, and additional

documentation was submitted. However, this documentation still indicates that in only the first two and a half months of 2014 there have been 5 assaults at the property as well as 4 incidents of criminal mischief, 2 thefts, and 1 vice related activity, among a number of other crimes both at the property and in the vicinity. The Applicant also points to Carver Terrace, a recently vacated project in the neighborhood, as the source of most of the disturbances. While this may be true, this actually raises more concern from staff's perspective. This development, located only six blocks away, was found to be an unsuitable site for affordable multifamily housing and was required by HUD to be demolished and relocated.

Finally, the Applicant has pointed to the city's Lot Exchange Program and One Block at a Time Program as mitigating factors to consider. Staff did not witness any evidence of these plans in effect upon the site visit. In addition, if staff were to concede that a community revitalization effort was in place in the area, the Rule does not call for consideration of such effort when determining eligibility of the site. Moreover, the application did not make the case for being under a revitalization plan.

Overall, staff still has a number of concerns with respect to this site and is therefore recommending denial of the appeal.



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Rick Perry  
GOVERNOR

**BOARD MEMBERS**  
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Juan S. Muñoz, PhD, *Vice Chair*  
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J. Mark McWatters  
Robert D. Thomas

April 1, 2014

*Writer's direct phone # 512-475-1676*  
*Email: [jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us)*

Kenneth D. Baugh II  
Port Arthur LM, LP  
2413 Blodgett Street  
Houston, Texas 77004

RE: TERMINATION OF HTC APPLICATION #14031 LOUIS MANOR, PORT ARTHUR, TEXAS

Dear Mr. Baugh:

Pursuant to §10.101(a)(4) of the 2014 Uniform Multifamily Rules (the "Rules"), if a development site is located within 1,000 feet of certain undesirable area features, such features must be disclosed by the applicant. This disclosure constitutes a request for pre-clearance of the site, which may be withheld by the Department if it is determined that there is a confluence of undesirable features that are of a nature that would not be typical of a neighborhood that would qualify under the Opportunity Index pursuant to §11.4(d)(4) of the 2014 Qualified Allocation Plan ("QAP"). Withholding of pre-clearance deems a site ineligible and is grounds for termination of the Application.

On January 14, 2014, the applicant for Louis Manor submitted to the Department a request for pre-clearance, disclosing that the site was within 40 feet of an active railway. Upon review of this request in February, staff interpreted it to actually be a request for an exemption made under a different provision of the rule, specifically §10.101(a)(3) related to Undesirable Site Features. Staff confirmed the nature of the request and then suggested that the applicant also address some potential undesirable area features, specifically blight and crime, in a request for pre-clearance. The applicant submitted a full application on the deadline, February 28, 2014, but it did not include a request for pre-clearance. On March 6, 2014 (after the deadline for submission of requests for pre-clearance), in preparation for a board meeting, the applicant submitted to staff information related to crime and blight in the area surrounding the development site. On March 18, 2014, staff also visited the site.

After review of the area immediately surrounding the site as well as the documentation provided by the applicant, staff has determined that within 1,000 feet of the site there exists 1) an active railway, 2) significant presence of blighted structures, 3) significant criminal activity that rises to the level of frequent police reports, and 4) a history of significant or recurring flooding. The existence of the railway



is not contested by the applicant, and while the application was granted an exemption under §10.101(a)(3) of the Rules related to Undesirable *Site* Features because the development has federal assistance from HUD, the presence of the railway is still considered in staff's overall assessment of the site with respect to §10.101(a)(4) of the Rules related to Undesirable *Area* Features, in accordance with direction from the Governing Board.

Attached to this letter are several pictures taken by staff on the March 18 site visit; they reflect a number of blighted structures all within 1,000 feet of the site. In addition, staff compared these current pictures to those at the same addresses on Google maps and found that some of the properties are in worse condition now than when the pictures were taken for the website. While there is a new elementary school across the street from the development, there was no visible evidence of any community revitalization or economic development efforts that would suggest that the many blighted structures would be repaired any time in the near future. Although the applicant claims that there is a current movement to revitalize the area, the application itself included no community revitalization plan. Moreover, there was no clear evidence that a substantive revitalization effort is underway that could predictably remedy the issues present in the immediate vicinity of the site.

Staff reviewed the information submitted by the applicant with respect to crime in the area and found that, at Louis Manor alone, in the span of one year (2013) there were reported 38 assaults, 10 persons with a gun or weapon, 7 vice related activities, 4 shots fired, 3 drug overdoses and 1 sexual assault, among a host of other crimes. All told there were 415 calls in 2013, which translates to 8 each week. There were over 4,000 total calls in district 8, which includes Louis Manor. While a letter from the Chief of Police in Port Arthur points to a nearby development as the source of a number of these disturbances, staff concluded that these figures represent significant criminal activity as contemplated by the rule. Therefore, due to the confluence of undesirable area features within 1,000 feet of the development site, the application for Louis Manor is hereby terminated.

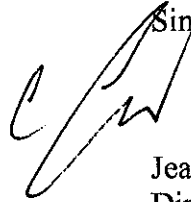
Staff reviewed the environmental issues that may be present due to the proximity of the site to oil and gas refineries. While this remains a general concern, staff reviewed the results of EPA testing of the air, water, and soil quality in the Westside Community and did not identify clear evidence of increased health and safety risks. Therefore, the presence of environmental issues was not a key element in staff's determination.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements relating to the filing of an appeal can be found in §10.902 of the 2014 Uniform Multifamily Rules. Should you choose to appeal this decision to the Executive Director, you must file your appeal, in writing, with the Department not later than seven (7) calendar days after the date of this letter. If you are not satisfied with the decision of the Executive Director or the Executive Director does not respond, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §10.902 of the 2014 Uniform Multifamily Rules for full instructions on the appeals process.



If you have any questions or concerns, please contact me at 512-475-1676 or by email at [jean.latsha@tdhca.state.tx.us](mailto:jean.latsha@tdhca.state.tx.us).

Sincerely,



CAMERION F. DORSEY  
FOR

Jean M. Latsha  
Director of Multifamily Finance

EBH



taken from Joe Louis Avenue facing northeast



taken from Joe Louis Avenue facing southwest



taken from northern corner of property facing southeast



taken from northern corner of property facing northwest



taken from northern corner of property facing southwest



taken from 14th Street just north of the property



taken from the corner of railroad and 14th Street





Railroad Avenue



Railroad Avenue (property just behind these buildings)



Railroad Avenue



Railroad Avenue



Railroad Avenue



Railroad Avenue



Railroad Avenue



Railroad Avenue





214 12th Street, approx. 1400 feet from site



301 12th Street



223 12th Street



220 Thomas Boulevard (not abandoned on google maps), approx. 1000 feet from the site



taken from southern corner of site





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HOUSTON, TEXAS 77002-6707  
713-437-1800  
FAX 713-437-1810  
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Antoinette "Toni" Jackson  
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Direct Fax: 713-437-1938  
tjackson@joneswalker.com

April 7, 2014

**VIA ELECTRONIC TRANSMITTAL  
AND OVERNIGHT DELIVERY**

Texas Department of Housing and  
Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
Attn: Timothy Irvine

Re: Louis Manor Apartments  
Port Arthur, Texas  
TDHCA #14031

Dear Irvine:

This letter is written on behalf of the applicant, Port Arthur LM, LP ("Applicant"), to appeal the termination of the application for Louis Manor Apartments, TDHCA #14031 ("Project"). The termination letter sites the reason for termination of the application is the existence of "(1) an active railway, (2) significance presence of blighted structures, (3) significant criminal activity that rises to the level of frequent police reports, and (4) a history of significant or recurring flooding" within 1000 feet of the Project. These area features were disclosed and information provided regarding each of these matters. It is the Applicant's belief that these factors do not rise to the level of termination and will address each factor in this appeal.

The Project is the proposed reconstruction of a 132 unit existing development in the historic Westside community in Port Arthur, Texas. The Project, which was originally built in 1969, is 100% federally subsidized with an existing Section 8 HAP contract. The current residents will be relocated in place during the redevelopment of the Project. The City of Port Arthur ("City") experienced significant damage as a result of a succession of tropical storms and

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JONES WALKER LLP

hurricanes during the 2008 hurricane season. Although a lot of work has been done to rebuild the City, there are still neighborhoods that are in need of rebuilding and revitalization. The South East Texas Regional Planning Commission (“SETRPC”) prepared a needs assessment to analyze the needs within the region including the City. In this assessment, it identified the fact that there is still a great need for reinvestment due to the damage caused by the hurricane. SETRPC continues to work to get the funding distributed to address the rebuilding so badly needed in these communities.

During the March board meeting, the staff pointed out the fact that the Project is located in a low poverty level neighborhood which historically has been predominantly African American. In order to maintain context, it should be mentioned that the City is over 38% African American and almost 30% Hispanic. This means that there are a number of neighborhoods that are identified as predominantly African American or minority. The average median household income in the City is \$30,957 and over 48% of the persons in the area are identified as low to very low income. This means that many of the neighborhoods in the City are low poverty with fewer high opportunity neighborhoods, as defined by the QAP, available to target new housing. It also means that in an effort to rebuild historic neighborhoods and provide the same opportunities to minorities and persons of lower incomes, housing will be located in high minority concentrated, low poverty census tracts where some of the area features that are recognized by the QAP as undesirable typically exists in these areas.

#### **I. Active Railway**

The Project, which was built in 1969, is located approximately 40 feet from an active railway. The Applicant requested and received an exemption for this site feature at the March board meeting under Section 10.101(a)(3) because of the ongoing federal subsidy.

The Applicant acknowledges the opposition of this exemption registered by Texas Appleseed. In its letter of opposition, Texas Appleseed refers to a report that it submitted to the General Land Office (“GLO”) and another to the SETPRC. The Project was not the subject of either of these reports and did not address the Project being in harm’s way of the factors set out in this report. The Texas Department of Transportation (“TXDOT”) conducts safety inspections of railroad facilities and equipment and monitor compliance for both state and federal safety regulations. TXDOT has confirmed that there have been no accidents on this stretch of track from 2006 to present. Additionally, the property manager has confirmed that there have been no incidents during their tenure as managers since 1999. The property management letter regarding the railroads is attached as Exhibit “A”.



The Project has a Project Based Section 8 Housing Assistance Payment (“HAP”) Contract covering 100% of the units. HUD has acknowledged the continuance of the HAP through July 31, 2025 and provided a letter of support for the Project. HUD has acknowledged that the property has suffered from normal wear and hurricane damage and is in need of substantial rehabilitation. HUD conducts its own environmental assessment to renew and maintain the Section 8 subsidy and there have been no findings to suggest that the subsidy should be interrupted or terminated. The HUD letter of support is attached as Exhibit “B”.

## **II. Significant Presence of Blighted Structures**

The City of Port Arthur suffered from being hit by a tropical storm and several hurricanes in succession (Hurricanes Rita, Humberto and Ike). As a result, the City has been working to recover from these storms and revitalize the neighborhoods that were impacted by storm damage and slow funding. The City has committed to revitalizing the city including the Westside community. In the last five years, the City has created a Lot Exchange Program and the One Block at a Time Program while building in the neighborhood. The Booker T. Washington Elementary school was built four (4) years ago and more recently, the Westside community has seen the addition of a health clinic and community center.

In July 2013, HUD, SETRPC and the City held a meeting to discuss the revitalization of the Westside community. SETRPC is currently in the process of qualifying approximately 400 Port Arthur homeowners to have their homes reconstructed with Hurricane Ike – Round II funding. Sixty-five to seventy (65-70) of these homes are located in the Westside neighborhood. Additionally, the City has committed to providing those homeowners who have substandard lots a qualifying lot through its Lot Exchange Program. The City currently has almost half of its exchange lots located in the Westside community.

The Applicant worked with the City and identified a total of 193 structures within the 1000 feet boundary of the Project. These structures included houses, churches, commercial buildings, schools and warehouses. Of the 165 homes, thirty-eight (38) or twenty-three percent (23%) were in visible, physical decline. The City is continuing to address those lots that are overgrown through its lot cutting program and its Lot Exchange program. Additionally, efforts have already been made by the Port Arthur

Housing Authority to vacate and will soon demolish its public housing site, Carver Terrace which was the subject of additional blight and criminal activity.

Both the City and SETRPC has acknowledged its commitment to rebuilding the Westside community and support of the Project. The city has communicated its strong belief that rehabilitating Louis Manor will enhance the City's efforts toward overall Westside community revitalization. The City letter regarding demolition of property in the Westside community is attached as Exhibit "C". The City resolution is attached as Exhibit "D". The SETRPC letter of support is attached as Exhibit "E".

### **III. Significant Criminal Activity**

The Applicant previously provided TDHCA with crime statistics for the year 2013. The staff interpreted these statistics as a high crime area. According to the police department, there is an overall downward trend in crime for both the Project and the district in which it is located. There was a 40% decrease of violent crimes for the Project from 2012 to 2013 and a 23% decrease for the district. In 2013, the data shows that there were three violent crimes reported on the Project and twenty-four in the district. In 2014 to date, there have been no violent crimes reported at the Project although there have been in the district. The comparative crime report is attached as Exhibit "F".

The Chief of Police has indicated that the nearby Carver Terrace, which was vacated in 2013, is the source of a number of disturbances reported in the crime report. Also, the district which encompasses the Project covers an area of several miles thereby providing a skewed picture of the criminal activity in the 1000 feet surrounding the Project. The Applicant is prepared to work with its neighbors and the Port Arthur Police Department to continue to decrease the criminal activity on and surrounding the Project. Even though the residents of Louis Manor Apartments will be relocated in place, each resident will be screened to assure that they meet the new criteria set as it relates to criminal records.

### **IV. History of Significant or Recurring Flooding**

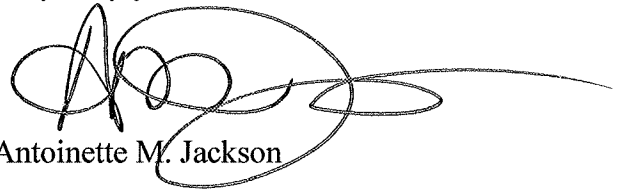
Hurricane Ike hit the City on September 13, 2008 damaging homes and entire communities throughout Jefferson, Hardin and Orange counties and leaving many under water. Over a 52-day period during the 2008 hurricane season, the southeast Texas coastline was slammed by a major tropical storm and three hurricanes. Prior to this time, the City and more specifically, the area surrounding the Project had not been prone to recurring flooding. The 2008 season proved unique and thus has been the only time this

Project has seen this level of significant flooding. The damage that the Project sustained from the storms was primarily wind related damage. Despite the successive storms in this area, the property did not flood and has not sustained any extensive flooding since 1999.

The Applicant is aware of the undesirable area features that have been identified as the reason for the termination and is working to mitigate those features where possible. However, it is the Applicant's contention that the confluence of these area features is typical in this area. Based upon the information provided in response to the termination, we are requesting that the staff decision to terminate this application be reversed and the application reinstated.

Should you have any further questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Antoinette M. Jackson', with a long horizontal flourish extending to the right.

Antoinette M. Jackson

AMJ/

# Exhibit “A”

EXCELLENCE IN AFFORDABLE HOUSING



J.ALLEN MANAGEMENT CO., INC.  
PROPERTY MANAGEMENT & CONSULTANTS

March 28, 2014

To Whom It May Concern:

I have managed Louis Manor Apartments since February 1, 1999 and there have not been any problems with the railroad or any safety hazards for the residents of the property. To my knowledge there have not been any issues since the property was built.

Please be reminded that the Port Arthur Independent School District completely remodeled an elementary school, Booker T Washington, only four (4) years ago. This school is located directly across from Louis Manor and a few hundred feet from the railroad tracks. The school district certainly had safety in mind when they initially built the school and when it was remodeled on that site.

Again Louis Manor residents have not had any incidents regarding safety or environmental problems from the railroad.

If you need additional information, please call.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua W. Allen, Sr.", written in a cursive style.

Joshua W. Allen, Sr.  
President

# Exhibit “B”



**U.S. Department of Housing and Urban Development**  
Houston Field Office, Region VI  
Office of Multifamily Housing  
1301 Fannin, Suite 2200  
Houston, Texas 77002  
(713) 718-3199 - FAX (713) 718-3244  
www.hud.gov

February 20, 2014

Tim Irvine, Executive Director  
Texas Department of Housing & Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

**SUBJECT: HUD/FHA 114-11355 – Section 8 HAP Contract TX24-M000-027**  
Louis Manor Apartments  
1300 Joe Louis  
Port Arthur, TX 77640  
Railroad Tracks Close Proximity to Project

Dear Tim:

It is the Departments understanding that a new potential purchaser of the subject development, Port Arthur LM, LP, will be e submitting a 9% LIHTC application this calendar year.

Louis Manor Apartments is a 132 unit, 44 year old development, with a 100% Project Based Section 8 Housing Assistance Payment (HAP) Contract which expires July 31, 2025. The last Management Review conducted by the Departmental Contractor, Southwest Housing Compliance Corporation was Satisfactory and the last Physical Inspection conducted by REAC scored 93b. The property has been operated in a decent, safe and sanitary manner meeting all of the Departmental requirements under our business agreements. However, the development has suffered from the effect of normal wear and incurred damage as a result of Hurricanes Ike and Rita and is in need of substantial rehabilitation.

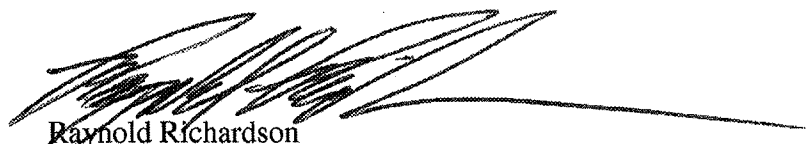
The new purchaser will be submitting an application for a Section 221(d)(4) mortgage to the Department if the HTC are awarded. The combination of HTC and the FHA insured mortgage would provide the funding vehicle for substantial rehabilitation and preserve this development for next 30-35 years. I would like you to know that the Department supports any efforts that will facilitate the rehabilitation of this 44-year old property.

The project is situated 40 feet from an active railway. It is our understanding that due to this issue the project would need an exemption from the TDHCA Board relative to Rehabilitation Developments with ongoing and existing federal assistance that would otherwise be in violation of 10.101((b)(3)(B). This property qualifies for an exemption due to the HUD assistance. Louis Manor has had a distress history and I hope, within the confines of your administrative policies, there is an opportunity for the proposed rehabilitation to go forward. It would be a benefit to the

current residents, who cannot move elsewhere without losing their rental assistance, and it would assist the Department in our efforts to preserve every possible Project-Based contract.

If you additional information or have other concerns, please do not hesitate to contact me at (713) 718-3137 or [Raynold.Richardson@hud.gov](mailto:Raynold.Richardson@hud.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Raynold Richardson', with a long horizontal line extending to the right.

Raynold Richardson  
Director, Houston Multifamily Housing  
Program Center

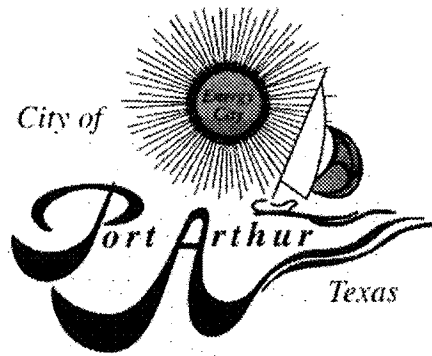
cc: Kelly Haines, Director  
Fort Worth Multifamily HUB



# Exhibit “C”

DELORIS "BOBBIE" PRINCE, MAYOR  
ROBERT E. WILLIAMSON, MAYOR PRO TEM

COUNCIL MEMBERS:  
RAYMOND SCOTT, JR.  
ELIZABETH "LIZ" SEGLER  
MORRIS ALBRIGHT, III  
WILLIE "BAE" LEWIS, JR.  
DERRICK FREEMAN  
KERRY "TWIN" THOMAS



JOHN A. COMEAUX, P.E.  
INTERIM CITY MANAGER

SHERRI BELLARD  
CITY SECRETARY

VALECIA TIZENO  
CITY ATTORNEY

**March 25, 2014**

**Mr. Kenneth Baugh  
2913 Blodgett  
Houston, TX 77004**

**Dear Mr. Baugh:**

**This letter is to confirm items discussed in regard to future development/redevelopment of the areas adjacent to Louis Manor Apartments located in the City of Port Arthur.**

**As discussed, the City is currently securing bids for the demolition of numerous substandard houses located near Louis Manor Apartments. In addition, the city is actively rebuilding houses damaged by Hurricane Ike with funds provided by the General Land Office.**

**The City is also upgrading parks and recreation facilities in that same area.**

**If additional information is needed, please let me know.**

**Yours very truly,**

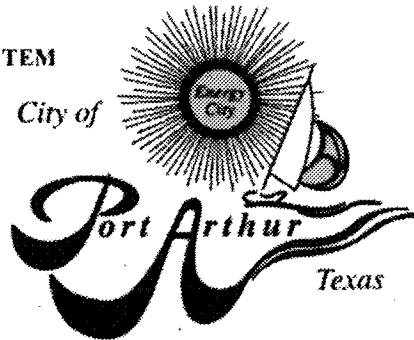
A handwritten signature in black ink that reads "John A. Comeaux, P.E." in a cursive style.

**John A. Comeaux, P.E.  
Interim City Manager**

# Exhibit “D”

DELORIS "BOBBIE" PRINCE, MAYOR  
ROBERT E. "BOB" WILLIAMSON, MAYOR PRO TEM

COUNCIL MEMBERS:  
RAYMOND SCOTT, JR.  
ELIZABETH "LIZ" SEGLER  
MORRIS ALBRIGHT, III  
ROBERT TROY  
WILLIE "BAE" LEWIS, JR.  
DERRICK FREEMAN  
KERRY "TWIN" THOMAS



JOHN COMEAUX  
INTERIM CITY MANAGER

SHERRI BELLARD  
CITY SECRETARY

VALECIA R. TIZENO  
CITY ATTORNEY

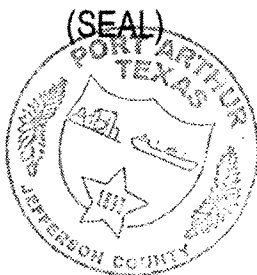
## CERTIFICATION

THE STATE OF TEXAS §

COUNTY OF JEFFERSON §

I, Sherri Bellard, City Secretary of the City of Port Arthur, Texas, hereby certify that the attached is a full, true, and correct copy of **Resolution No. 14-078** as the same appears of record in the City of Port Arthur, Texas; and that the City Secretary is the lawful possessor and custodian of said document.

WITNESS MY HAND AND SEAL of office at my office in Port Arthur, this the 18<sup>th</sup> day of February, 2014



A handwritten signature in cursive script that reads "Sherri Bellard".

Sherri Bellard, City Secretary

RESOLUTION NO. 14-077

A RESOLUTION SUPPORTING THE SUBMISSION OF AN APPLICATION BY PORT ARTHUR LM, LP FOR HOUSING TAX CREDITS AT 1300 JOE LOUIS AVENUE AND AUTHORIZING AN ALLOCATION OF THE REHABILITATION/CONSTRUCTION OF THE DEVELOPMENT (REQUESTED BY COUNCILMEMBER LEWIS)

WHEREAS, Port Arthur LM, LP has proposed a development for affordable rental housing at 1300 Joe Louis Avenue named Louis Manor Apartments in the City of Port Arthur, Jefferson County, Texas; and

WHEREAS, Port Arthur LM, LP has communicated that it intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2014 Housing Tax Credits for Louis Manor Apartments.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That as provided for in 10 Texas Administrative Code §11.3(b), it is expressly acknowledged and confirmed that the City of Port Arthur, Jefferson County, Texas has more than twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds.

Section 3. That that the City of Port Arthur, Jefferson County, Texas hereby supports the proposed Louis Manor Apartments and confirms that its governing body has voted specifically to approve the rehabilitation/construction of the Development and to authorize an allocation of Housing Tax Credits for the Development pursuant to Texas Government Code §2306.6703(A)(4).

Section 4. That for and on behalf of the Governing Body, the City Secretary is hereby authorized, empowered, and directed to certify these resolutions to the Texas Department of Housing and Community Affairs.

Section 5. That a copy of the caption of this Resolution shall be spread upon the Minutes of the City Council.

**READ, ADOPTED, AND APPROVED,** this 18<sup>th</sup> day of Feb., 2014 AD, at a Regular Meeting of the City Council of the City of Port Arthur, Texas by the following vote: AYES:

Mayor: Prince; Mayor Pro Tem Williamson;

Councilmembers: Scott, Lewis,  
Freeman and Thomas

NOES: Councilmember Albright.

Debra Prince  
Mayor

**ATTEST:**

  
City Secretary

**APPROVED AS TO FORM:**

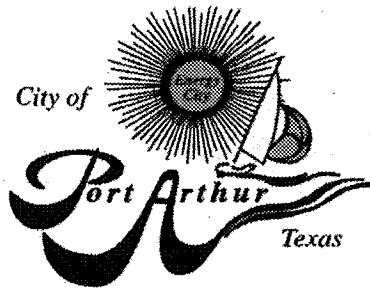
(See Confidential Memo)  
City Attorney

**APPROVED FOR ADMINISTRATION:**

  
John A. Comeaux, P.E.,  
Interim City Manager

DELORIS "BOBBIE" PRINCE, MAYOR  
ROBERT E. WILLIAMSON, MAYOR PRO TEM

COUNCIL MEMBERS:  
RAYMOND SCOTT, JR.  
ELIZABETH "LIZ" SEGLER  
MORRIS ALBRIGHT, III  
ROBERT TROY  
WILLIE "BAE" LEWIS, JR.  
DERRICK FREEMAN  
KERRY "TWIN" THOMAS



FLOYD T. JOHNSON  
CITY MANAGER

VALECIA "VAL" TIZENO  
CITY ATTORNEY

SHERRI BELLARD  
CITY SECRETARY

February 17, 2014

Kristin Tate  
PCA Consultants  
340 N Sam Houston Pkwy Ste. 200  
Houston, TX. 77060

**RE: Zoning Designation for Louis Manor Apartments, located at 1300 Joe Louis Avenue,  
Port Arthur, Texas 77640.**

Dear Ms. Tate:

After careful consideration, I have determined that the property located at *1300 Joe Louis Avenue* is located in a *Multi-Family (MF) Zoned District*. As such, any building or portion thereof, which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments is allowed by right at this address.

The property is legally conforming and there are no recorded conformance issues or building code violations on file in this office; however you may contact Mr. Lawrence Baker, Director of Code Enforcement, City of Port Arthur, P.O. Box 1089, Port Arthur, Texas, 77641, (409) 983-8242, [baker1@portarthur.net](mailto:baker1@portarthur.net) for any issues regarding *Code Violations and Certificate of Occupancy*.

Also, attached is *Section 12* of the Zoning Ordinance of the City of Port Arthur pertaining to district regulations for *Multi-Family Zoned Districts*.

If you have any questions, concerns or comments; please contact the Planning and Zoning Division at (409) 983-8135 or [paplanning@portarthur.net](mailto:paplanning@portarthur.net).

Sincerely,

A handwritten signature in black ink that reads "Pamela D. Langford". The signature is written in a cursive, flowing style.

**Pamela D. Langford**  
Administrative Aide,  
Planning and Zoning Division

Attachment(s)

Cc: Ronald Burton, Director of Development Services



PART II - CODE OF ORDINANCES  
APPENDIX A - ZONING

SECTION 12. - MULTIPLE-FAMILY DISTRICT REGULATIONS

**SECTION 12. - MULTIPLE-FAMILY DISTRICT REGULATIONS**

12-100. - Intent and purpose.

12-200. - Conformance to regulations.

**12-100. - Intent and purpose.**

The purpose of the "MF", multiple-family residence district is to establish areas appropriate for multiple-family dwellings. These areas require greater accessibility and a higher level of utility service than other residential areas. Limited service uses are permitted.

**12-200. - Conformance to regulations.**

Except as hereinafter provided, no building or structure or part thereof shall be erected, altered or converted for any use permitted in the multiple-family district unless it is in conformity with the minimum regulations herein specified.

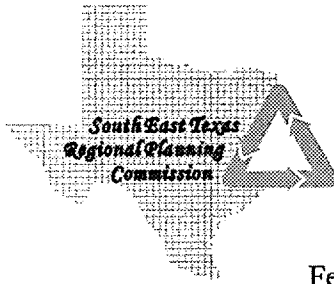
*12-201. Multiple-family district regulations.*

	Area (sq. ft.)	Lot Width (ft.)	Front Yard (ft.)	Side Yard (ft.)	Rear Yard (ft.)	Coverage
Single-family detached	5,000	<u>50</u>	20	5	10	40%
Single-family attached	2,000	18	20	5	10	40%
Two-family	1,200	60	20	10	10	40%
Mobile home fixed	5,000	<u>50</u>	20	5	10	40%

*12-202. Special front yard regulations.*

- (1) If one side of a block face is divided into two or more districts, all the front yards shall comply with the requirement of the most restrictive districts. (See Zoning Appendix C, Illustration 7)
- (2) The front building line established on a plat approved by the commission shall take precedence over the front yard prescribed for this district.
- (3) The front yard shall be measured from the property line to the front face of the building, covered porch, covered terrace or attached accessory building. Eaves and roof extension or a porch without

# Exhibit “E”



February 25, 2014

**PRESIDENT**  
GLENN JOHNSON  
Mayor  
City of Port Neches

**1st VICE-PRESIDENT**  
FRED WILLIAMS  
Mayor  
City of Kountze

**2nd VICE-PRESIDENT**  
KIRK ROCCAFORTE  
Mayor  
City of Bridge City

**3rd VICE-PRESIDENT**  
EDDIE ARNOLD  
Commissioner  
Jefferson County

**TREASURER**  
CHRIS KIRKENDALL  
Commissioner  
Hardin County

**SECRETARY**  
DAVID DUBOSE  
Commissioner  
Orange County

**LEGAL COUNSEL**  
LANCE BRADLEY  
Attorney at Law

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

RE: 2014 Housing Tax Credit Application  
Louis Manor Apartments  
Port Arthur, TX 77640  
Application # 14031

Dear Board Members,

On behalf of the South East Texas Regional Planning Commission, I am pleased to express support for application number 14031 submitted by Port Arthur LM, LP, to the Texas Department of Housing and Community Affairs (TDHCA).

Port Arthur LM, LP is participating in the 2014 application process to acquire funds to rehabilitate Louis Manor Apartments. The project is located at 1300 Joe Louis Ave, Port Arthur TX, 77640. The proposed development will provide affordable housing to the citizens of Port Arthur. It will give residents the opportunity to live in a new building with reduced rents and under safe and sanitary conditions. This is sure to improve the quality of life for many people and be a positive impact on the community and our region.

Again, the Louis Manor application has our full support in their efforts to provide quality, safe clean housing to the general population of Port Arthur. Thank you for your careful consideration of this application for funds.

Sincerely,

Shaun P. Davis  
Executive Director

**EXECUTIVE DIRECTOR**  
SHAUN P. DAVIS  
[sdavis@setrpc.org](mailto:sdavis@setrpc.org)

2210 Eastex Freeway  
Beaumont, Texas 77703-4929  
Telephone (409) 899-8444  
FAX (409) 347-0138  
[setrpc@setrpc.org](mailto:setrpc@setrpc.org)  
<http://www.setrpc.org>

# Exhibit “F”

Call Type	2012		2013		2014		2012-2013		
	District	Louis Manor	District	Louis Manor	Jan 1 - Mar 17	Jan 1 - Mar 17	Percent Change		
					District 8	Louis Manor	District	Louis Manor	
Abandon Vehicle	27		36		6			33%	
Accident Minor/Major	163	1	108	1	28			-34%	
Alarm	278		308		88			11%	
Animal in Road	4		4	1				0%	
Assault	191	36	184	38	21	5		-4%	6%
Assist Other Agency	89	4	30	2	1			-66%	
Attempt to Locate	25	2	26	6	1			4%	200%
Auto Theft	55	7	41	4	6			-25%	
Burglary	121	7	118	7	11			-2%	0%
Check on Rounds	231	5	228	6	42			-1%	
Check on Welfare	71	8	73	6	14			3%	-25%
Elderly Child Abuse/Neglect	10	3	9	3	1			-10%	
Credit/debit Card Abuse	4		3		1			-25%	
Criminal Mischief	102	20	70	10	12	4		-31%	
Intoxicated Driver	10	1	10					0%	-100%
Death	10		13		1			30%	
Deliver Message			3	1	1				
Disturbance	725	92	599	145	102	9		-17%	
Escort			2						
Evading/Resisting	18	3	7		2	1		-61%	
Fight	80	14	58	16	6			-28%	14%
Family Disturbance	152	13	140	19	18	5		-8%	
Fireworks	3	1	4	1	2	1		33%	0%
Fire (Police Response)	16	2	15	1	1			-6%	
Found Property	12		6	1	2			-50%	
Harassment/Threats	30	6	40	7	8			33%	
Hazardous Condition	52		79		15			52%	
<b>Homicide</b>			<b>1</b>						
Kidnapping	2				1			-100%	
Lost Child	7	1	4	1				-43%	
Man (Person) Down	4		6		1			50%	
Mental Subject	13	5	6		2	1		-54%	
Misc Call for Service	190	7	184	9	39			-3%	29%
Asst Public/Civ Stand By	104	6	90	16	8	1		-13%	
Missing Person	6	1	8					33%	-100%
Indecency w/ Child	1							-100%	
Open door/Window	17		15		5			-12%	
Overdose (Drug)	4	2	11	3	1			175%	
Parking Violation	7		12		2			71%	
Person w/Gun/Weapon			26	10	4				
Loud Noise/ Music	79	5	50	11	9	1		-37%	120%
Class C Charge	70	1	25		1			-64%	
Prowler	20	2	26		5			30%	-100%
Pubic Lewdness	3		4		1			33%	
Public Intoxication	39	3	33	6	12	3		-15%	100%
Reckless Driver	31		21		6			-32%	
<b>Robbery</b>	<b>22</b>	<b>4</b>	<b>15</b>	<b>2</b>	<b>2</b>			<b>-32%</b>	<b>-50%</b>
Runaway	33	8	43	6	7			30%	
<b>Sexual Assault</b>	<b>7</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>2</b>			<b>-14%</b>	<b>0%</b>

Call Type	2012		2013		2014		2012-2013	
	District	Louis Manor	District	Louis Manor	Jan 1 - Mar 17 District 8	Jan 1 - Mar 17 Louis Manor	Percent Change	
							District	Louis Manor
<b>Shooting</b>	1		2		1		100%	
Shots Fired	33	4	35	4	10		6%	0%
<b>Stabbing</b>	1						-100%	
Suicide/Attempted Suicide	13		7		2	1	-46%	
Suspicious Activity/ Person	201	7	214	7	43		6%	
Telephone Harassment	18	2	12	2	1	1	-33%	0%
Theft/Shoplifter/Driveoff	116	17	117	15	17	2	1%	
Forgery	1		3				200%	
Traffic Offense	539	1	449		111	1	-17%	
Trespassing	55	2	64	2	15		16%	0%
Unknown Call/ 911 Hang Up	65	6	54	3	13	1	-17%	
<b>Vice Related Activity</b>	67	3	87	7	17	1	30%	133%
Warrant Service	139	6	110	9	33	2	-21%	
Followup	162	22	128	24	24	4	-21%	9%
Violation of Court Order	7	5	2				-71%	
Auto Burg	33	2	23	2	3		-30%	0%
Deadly Conduct	7	4	4				-43%	
Fail To ID	6							
Curfew Violation - Any Cis	1							
False Report To PO	2							
Metal Burglary	1							
Metal Thefts	18							
<b>Total Violent Crimes</b>	<b>31</b>	<b>5</b>	<b>24</b>	<b>3</b>	<b>5</b>	<b>0</b>	<b>-23%</b>	<b>-40%</b>
<b>Total</b>	<b>4624</b>	<b>352</b>	<b>4111</b>	<b>415</b>	<b>788</b>	<b>44</b>	<b>-11%</b>	<b>18%</b>
<b>Total Calls Per Week</b>	<b>89</b>	<b>7</b>	<b>79</b>	<b>8</b>	<b>72</b>	<b>4</b>		
<b>Non Significant Criminal Activity Calls</b>	<b>2027</b>	<b>188</b>	<b>1768</b>	<b>254</b>	<b>301</b>	<b>24</b>		
Animal in Road, Assist Other Agency, Disturbance Escort, Fireworks, Fire, Hazardous Condition, Mental Subject, Misc Call for Service, Assist Public/Civ Standby Parking Violation, Loud Music/Noise, Unknown Call/ Hang-up, Deliver Message, Check on Rounds, Check on Welfare, Family Disturbance, Lost Child, Missing Person, Runaway, Telephone Harassment, Followup								
<b>Total Calls w/o Non Significant Criminal Activity Calls</b>	<b>2597</b>	<b>164</b>	<b>2343</b>	<b>161</b>	<b>487</b>	<b>20</b>		
<b>Frequency of Calls Increase/Decrease</b>	<b>-44%</b>	<b>-53%</b>	<b>-43%</b>	<b>-61%</b>	<b>-38%</b>	<b>-55%</b>		
<b>Total Calls Per Week</b>	<b>50</b>	<b>3</b>	<b>45</b>	<b>3</b>	<b>44</b>	<b>2</b>		

\*According to the FBI website, <http://www.fbi.gov>, "In the FBI's Uniform Crime Reporting (UCR) Program, violent crime is composed of four offenses: murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. Violent crimes are defined in the UCR Program as those offenses, which involve force or threat of force."

\* We did not include Assault in any of our significant criminal activity or violent crime numbers due to the definition of assault and violent crime as defined by the FBI. Assault can be a verbal confrontation or a showing match that was reported

Call Type	2012		2013		2014		2012-2013	
	District	Louis Manor	District	Louis Manor	Jan 1 - Mar 17 District 8	Jan 1 - Mar 17 Louis Manor	Percent Change District Louis Manor	

\* Texas Penal Code defines **Assault** as (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative

\* Texas penal code defines **Aggravated Assault** as follows: (a) A person commits an offense if the person commits assault as defined in § 22.01 and the person: (1) causes serious bodily injury to another, including the person's spouse; or (2) uses or exhibits a deadly weapon during the commission of the assault.

\*Note that Overdose is not a crime, it is an act committed against oneself and is treated as a mental health issue. It is not safe to make the assumption that Overdose is due to illegal drugs as it can be a consequence of prescription drug use

\* Calls included for Violent Crime included Homicide, Robbery, Sexual Assault, Shooting, & Stabbing

\* Vice related activity which may include prostitution, gambling, narcotics, pornography and illegal sales of alcohol is not individually specified in the data. These calls may or may not include gang activity, prostitution or drug trafficking

**Key Findings**

Overall

- \* Overall decrease in calls for service from 2012 to 2013
- \* Decrease in Violent Crime of 23% and 40% from 2012 to 2013 for District and Louis Manor respectively
- \* Decrease in Calls for service overall in 2014 vs. 2013 and a projected 2014 decrease in crime/calls for service based on 2013 statistics and current 2014 data.

Violent Crime

- \* 2013 data shows twenty-four (24) violent crimes occurred in District 8, three (3) of which occurred at Louis Manor
- \* Of the three (3) at Louis Manor, the single sexual assault call was disregarded by PAPD
- \* 2014 data shows only five (5) violent crimes and zero for Louis Manor through March 18, 2014.
- \* Seven (7) vice related activity calls for service occurred in 2013 for Louis Manor, two (2) of which resulted in no report. One (1) call has occurred thus far in 2014

Call/Report Frequency

- \* Further careful analysis of individual calls shows a number of calls related to Non-Significant Criminal Activity, escalating the overall total volume of calls
- \* These calls include Animal in Road, Assist Other Agency, Disturbance, Escort, Fireworks, Fire, Hazardous Condition, Mental Subject, Misc Call for Service, Assist Public/Civ Standby, Parking Violation, Loud Music/Noise, Unknown Call/Hang-up, Deliver message, Check on Rounds, Check on Welfare, Family Disturbance, Lost Child, Missing Person, Runaway, Telephone Harassment, Followup
- \* Removal of these less relevant calls results in the following for 2012: approximately 2600 calls for District 8 and 165 calls for Louis Manor a 44% and 53% decrease respectively
- \* Removal of these less relevant calls results in the following for 2013: approximately 2350 calls for District 8 and 160 calls for Louis Manor a 43% and 61% decrease respectively
- \* Removal of these non significant criminal activity calls translates to 3 calls/week at Louis Manor for 2012 and 2013 vs. 8 as reported by TDHCA
- \* There is no evidence that any of the calls that occurred in District 8 occurred within 1000 ft of Louis Manor

TDHCA Findings

"Staff reviewed the information submitted by the applicant with respect to crime in the area and found that, at Louis Manor alone, in the span of one year (2013) there were reported **38 assaults, 10 persons with a gun or weapon, 7 vice related activities, 4 shots fired, 3 drug overdoses and 1 sexual assault, among a host of other crimes.** All told there were **415 calls in 2013, which translates to 8 each week.** There were over **4,000 total calls in District 8,** which includes Louis Manor. While a letter from the Chief of Police in Port Arthur points to a nearby development as the source of a number of these disturbances, staff concluded that

	2012		2013		2014		2012-2013		
Call Type	District	Louis Manor	District	Louis Manor	Jan 1 - Mar 17 District 8	Jan 1 - Mar 17 Louis Manor	Percent Change	District	Louis Manor

these figures represent significant criminal activity as contemplated by the rule. Therefore, due to the confluence of undesirable features within 1,000 feet of the development site, the application for Louis Manor is hereby terminated

\* As you can see according to our findings, many of the concerns that TDHCA has are not as significant especially as it relates to incidence of calls, violent crime, Vice related activity and actual calls/week at Louis Manor