

BOARD BOOK OF APRIL 28, 2016



J. Paul Ozer, Chair
Juan Muñoz, Vice-Chair
Leslie Bingham Escareño, Member
T. Tolbert Chisum, Member
Tom H. Gann, Member
J. B. Goodwin, Member

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

**A G E N D A
10:30 AM
April 28, 2016**

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

CALL TO ORDER

ROLL CALL

J. Paul Oxer, Chairman

CERTIFICATION OF QUORUM

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. Action may be taken on any item on this agenda, regardless of how designated.

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

LEGAL

- a) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Avalon Apartments (HTC 91036 / CMTS 954)
- b) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning West Gate Apartments (HOME 535259 / CMTS 2702)
- c) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Bristol Court Apartments (HTC 94021 / CMTS 1218)
- d) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Sphinx at Delafield (HTC 04419 / BOND 04419B / CMTS 4057)
- e) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning North Athens (HOME 532340 / CMTS 2707)
- f) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Villa de Reposo – Encinal (HOME 530201 / CMTS 4002)
- g) Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning North Oregon Apartments (HTC 91204 / CMTS 1016)

Jeffrey T. Pender
Deputy General Counsel

ASSET MANAGEMENT

- h) Presentation, Discussion and Possible Action regarding Material Amendment to Housing Tax Credit Land Use Restriction Agreement ("LURA")
97047 La Herencia Apartments Mercedes

Raquel Morales
Director

- i) Presentation, Discussion and Possible Action regarding Ownership Transfer and Material Amendment to Housing Tax Credit Land Use Restriction Agreement ("LURA")

96026 Hollow Creek Apartments

Conroe

BOND FINANCE

- j) Presentation, Discussion, and Possible Action on Resolution 16-015 regarding the annual approval of the Department's Interest Rate Swap Policy
- k) Presentation, Discussion, and Possible Action on Resolution 16-016 regarding the annual approval of the Department's Investment Policy

Monica Galuski
Director

RULES

- l) Presentation, Discussion, and Possible Action proposing an amendment to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2, Definitions, and directing that it be published for public comment in the *Texas Register*
- m) Presentation, Discussion, and Possible Action proposing an amendment to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.19, Income Eligibility, and directing that it be published for public comment in the *Texas Register*
- n) Presentation, Discussion, and Possible Action proposing amendments to 10 TAC Chapter 20 Single Family Programs Umbrella Rule, §20.15, Compliance and Monitoring, and 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101, Purpose and Overview, and directing that they be published for public comment in the *Texas Register*

Michael DeYoung
Director, Community
Affairs

Brooke Boston
Deputy Executive Director

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, April 2016
- b) Compliance Division Update
- c) Report on the Amended 2016 State of Texas Consolidated Plan: One Year Action Plan
- d) Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers
- e) Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
- f) Report on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures

Michael Lyttle
Chief, External Affairs

Patricia Murphy
Chief of Compliance

Elizabeth Yevich
Director, Housing
Resource Center

Raquel Morales
Director, Asset Mgmt

David Cervantes
Chief Financial Officer

Monica Galuski
Director, Bond Finance

ACTION ITEMS

ITEM 3: INTERNAL AUDIT

- a) Report on the Meeting of the Audit Committee
- b) Internal Audit Report #16-002 "Real Estate Analysis Division"
- c) Internal Audit Report #16-007 "Implementation Status of Prior Audit Recommendations"

Mark Scott
Director

ITEM 4: ASSET MANAGEMENT

Presentation, Discussion and Possible Action regarding Material Amendments to Housing Tax Credit/HOME Applications

Raquel Morales
Director

15063 Palladium Van Alstyne Senior Living

Van Alstyne

15086 The Reserves at Preston Trails

Wolfforth

ITEM 5: COMPLIANCE

Presentation, Discussion, and Possible Action regarding an appeal of disallowed costs under the HOME program for Ebenz Inc.

Earnest Hunt
Director of Subrecipient
Monitoring

ITEM 6: COMMUNITY AFFAIRS

Presentation, Discussion, and Possible Action on the Award of contracts to administer the U.S. Department of Energy (“DOE”) and Low Income Home Energy Assistance Program (“LIHEAP”) Weatherization Assistance Program (“WAP”) to Greater East Texas Community Action Program to provide services in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties

Michael DeYoung
Director

ITEM 7: MULTIFAMILY FINANCE

a) Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under the Department’s Multifamily Program Rules

Marni Holloway
Director

16175 Crosby Meadows Apartments Crosby

b) Presentation, Discussion, and Possible Action on an Award of Direct Loan Funds from the 2016-1 Multifamily Direct Loan Notice of Funding Availability

16500 Bluebonnet Studios Austin

c) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

Teresa Morales
Manager

16401 George W. Baines Apartments El Paso

16402 Charles R. Morehead Apartments El Paso

16404 Stallion Pointe Apartments Fort Worth

d) Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds (Garden City Apartments) Series 2016 Resolution No. 16-014 and Determination Notice of Housing Tax Credits

ITEM 8: REPORTS

a) Report Regarding the Progress of *Youth Count Texas!*

Elizabeth Yevich
Director, Housing
Resource Center

b) Report on 2017 Qualified Allocation Plan ("QAP") Project

Marni Holloway
Director, MF 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 Ozer
Chairman

1. The Board may go into Executive Session Pursuant to Tex. Gov’t Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
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;
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; including seeking legal advice in connection with a posted agenda item;
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 or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact 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 Elena Peinado, 512-475-3814, 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 Elena Peinado al siguiente número 512-475-3814 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

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

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

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

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

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

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

CONSENT AGENDA

1a

BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Avalon Apartments (HTC# 91036 / CMTS 954)

RECOMMENDED ACTION

WHEREAS, Avalon Apartments in Arlington, Tarrant County, owned by Avalon Apartments, LLC (“Owner”), has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, representatives of Avalon have attended multiple informal conferences and signed prior Agreed Final Orders in 2012 and 2014;

WHEREAS, both prior Agreed Final Orders were violated and the following violations remain unresolved: 2009 Uniform Physical Condition Standards (“UPCS”) violations; 2011 Annual Owners Compliance Report (Part B), 2012 Annual Owners Compliance Report (Part B), failure to make units 121 and 234 ready for occupancy, failure to submit tenant files for 5 units that were above the income limit upon initial occupancy, failure to provide lease addenda for 9 units, failure to provide pre-onsite documentation, failure to provide annual eligibility certifications for 49 units;

WHEREAS, administrative penalties of \$5,000 and \$10,000, respectively, came due under the prior Agreed Final Orders as a result of owner’s failure to remedy the above violations, and demand was made for the full penalty amounts;

WHEREAS, Avalon failed to submit the demanded payments and each was referred to the Office of the Attorney General for collection, where payment plans were negotiated. The final payment for the 2012 Agreed Final Order was submitted on November 6, 2014, and payments are ongoing for the 2014 Agreed Final Order;

WHEREAS, TDHCA identified the following new violations that were not timely resolved and remain unresolved today: 2015 UPCS violations; failure to provide tenant files during the scheduled 2015 onsite review resulted in a finding for failure allow onsite monitoring, and failure to submit pre-onsite documentation. In addition, one of the purposes of the 2015 onsite file monitoring review was to re-check prior file monitoring violations listed above, all of which remained outstanding and are considered new violations.

WHEREAS, on February 23, 2016, owner’s representative met with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$62,000, with a \$42,000 portion to be forgiven if all violations are resolved on or before August 26, 2016; and

WHEREAS, staff has based its recommendations for an Agreed Final Order on the Department’s rules for administrative penalties and an assessment of each and all of

the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case;

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$62,000, subject to partial forgiveness as outlined above for noncompliance at Avalon Apartments (HTC 91036 / CMTS 954), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Avalon Apartments, LLC is the owner of Avalon Apartments, a low income apartment complex composed of 75 units, located in Arlington, Tarrant County. Records of the Texas Secretary of State list Dzeladin Jadaroski (a/k/a Xheladin Jasari and Xeladin Jasaroski in CMTS) as the Director/President/Treasurer and Flaza Jasaroski as the Vice President/Secretary of Avalon Apartments, LLC. The property is self-managed.

Avalon Apartments is subject to a land use restriction agreement ("LURA") signed by the prior owner in 1993 in consideration for an allocation of housing tax credits in the amount of \$857,230 to acquire and rehabilitate the Property. Current owner 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 Enforcement 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 ("OAG") for collection. The OAG accepted a payment agreement and the final payment was made in November of 2014.

New violations were referred to the 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, 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 submit any corrective documentation and the \$10,000.00 penalty was declared due and payable, then referred to the Office of the Attorney General ("OAG") for collection. The OAG accepted a payment agreement and payments are ongoing.

The following compliance violations referred for an administrative penalty under the two prior Agreed Final Orders outlined above remain unresolved:

1. Failure to document resolution of 2009 UPCS Violations;
2. Failure to make unit 234 ready for occupancy and available for rent;
3. Failure to make unit 121 ready for occupancy and available for rent;
4. Failure to execute required lease provisions for 9 units;
5. Failure to submit pre-on-site documentation;
6. Failure to ensure that household incomes are at or below applicable limits upon initial occupancy for 5 units;
7. Failure to execute Annual Eligibility Certification forms for 49 units;

8. Failure to fully submit 2011 Annual Owners Compliance Report; and
9. Failure to fully submit 2012 Annual Owners Compliance Report.

The following compliance violations were identified by the Compliance Division during 2015. New corrective action deadlines were set, but no response was received. The violations were referred for an administrative penalty, remain unresolved, and are part of the new administrative penalty recommendation:

1. Failure to resolve 2009 or 2015 UPCS violations;
2. Owner was present for the 2015 onsite file monitoring review, but indicated that there were no tenant files to review; as a result, a finding for failure to allow onsite monitoring was recorded;
3. Failure to submit pre-onsite documentation;
4. One of the purposes of the 2015 onsite file monitoring review was to determine whether prior file monitoring violations had been corrected or whether they remained out of compliance, in which case they are recorded as a new violation. All violations remained uncorrected as there were no tenant files:
 - a. Failure to make unit 234 ready for occupancy and available for rent;
 - b. Failure to make unit 121 ready for occupancy and available for rent;
 - c. Failure to execute required lease provisions for 9 units;
 - d. Failure to ensure that household incomes are at or below applicable limits upon initial occupancy for 5 units;
 - e. Failure to execute Annual Eligibility Certification forms for 49 units;
 - f. Failure to fully submit 2011 Annual Owners Compliance Report; and
 - g. Failure to fully submit 2012 Annual Owners Compliance Report.

Owner met with the Administrative Penalty Committee on February 23, 2016, and agreed to sign an Agreed Final Order with the following terms:

1. An administrative penalty in the amount of \$62,000, subject to partial forgiveness as indicated below;
2. Owner must correct all violations as indicated in the attachments to the Agreed Final Order and submit full documentation of the corrections to TDHCA on or before August 26, 2016;
3. Owner must attend 1st Thursday Income Eligibility Training and HTC Compliance Training, and submit completion certificates to the Department on or before August 26, 2016;
4. If Owner complies with all requirements and addresses all violations as required by the attachments to the Agreed Final Order, a \$42,000 portion of the administrative penalty will be forgiven and a demand will be sent for the remaining \$20,000 due under the Order;
5. If Owner violates any provision of the Agreed Final Order, the full \$62,000 administrative penalty would immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of

\$62,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
AVALON APARTMENTS, L.L.C. WITH
RESPECT TO
AVALON APARTMENTS
(LIHTC FILE # 91036 / CMTS # 954)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 (“Respondent”).

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1993, Texas Avalon, Ltd. (“Prior Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Board, in the total amount of \$857,230 to build and operate Avalon Apartments (“Property”) (HTC file No. 91036 / CMTS No. 954 / LDLD No. 102).
2. 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.

3. Respondent took ownership of the Property on March 31, 2004 and is subject to the continuing requirements of the LURA.
4. Respondent is a Texas limited liability corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. Respondent has a history of violations and previously signed two Agreed Final Orders:
 - a. The first was effective May 25, 2012, with Respondent agreeing to pay a \$5,000 administrative penalty which was to be fully forgivable provided that Respondent attended training and complied with the terms of the Agreed Final Order. Multiple violations were not resolved as required and a penalty demand letter was sent. Respondent failed to submit the required \$5,000 penalty payment on or before the February 21, 2013 payment deadline. The Department referred the file to the Office of the Attorney General and they negotiated a payment plan with Respondent. The full administrative penalty was paid under that plan, but all violations remain unresolved.
 - b. The second was effective July 17, 2014, with Respondent agreeing to comply with all requirements of the Order on or before August 6, 2015, and pay a \$10,000 administrative penalty, of which \$2,500 was forgivable provided that Respondent complied with terms of the Agreed Final Order. No corrections were submitted and a penalty demand letter was sent. Respondent failed to submit the required \$10,000 penalty payment on or before the December 18, 2014 payment deadline. The Department referred the file to the Office of the Attorney General and they negotiated a payment plan with Respondent. Payments are continuing in the amount of \$416 per month, but all violations remain unresolved.

¹ 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.

6. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on June 10, 2015. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a September 21, 2015, corrective action deadline was set. One violation was resolved during the inspection and no further corrections have been received. The list of violations is at *Attachment 1*.
7. On May 8, 2015 and July 1, 2015, TDHCA sent notice that Respondent had failed to timely submit their 2014 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. All parts of that report remain outstanding.
8. An on-site monitoring review was attempted on July 16, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. TDHCA staff was unable to complete a review because owner had no tenant files. Notifications of noncompliance were sent and a November 17, 2015, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. By failing to provide tenant files, Respondent is deemed to have failed to allow on-site monitoring, a violation of 10 TEX. ADMIN. CODE §10.618 (Onsite Monitoring), which requires owners to permit a review by the Department and provide records for review;
 - b. Respondent failed to submit 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, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review;
 - c. The following prior file monitoring violations were to be rechecked during the on-site review. The violations were not resolved and are considered new violations:
 - i. 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 § 10.621 (Property Condition Standards) which requires units to be decent, safe, sanitary and in good repair.
 - ii. 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 §10.613 (Lease Requirements), which requires certain lease language;
 - iii. 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 §10.621 (Property Condition Standard) which requires units to be decent, safe, sanitary and in good repair;

- iv. 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 §10.611 (Determination, Documentation and Certification of Annual Income) which outlines how to properly determine household income.
 - v. 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 §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
9. All of the violations indicated above remain outstanding at the time of this order.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.618 in 2015, by failing to comply with onsite monitoring requirements when files were requested and not provided.
5. Respondent violated 10 TEX. ADMIN. CODE §10.607 and 10.618 in 2015 by failing to provide required pre-onsite documentation.
6. Respondent violated 10 TEX. ADMIN. CODE §10.621 in 2015, 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.
7. Respondent violated 10 TEX. ADMIN. CODE 10 TEX. ADMIN. CODE §60.105 in 2015 by failing to submit Annual Owner's Compliance Report due for the year 2014;
8. Respondent violated Section 3(g) of the LURA and 10 TEX. ADMIN. CODE § 10.621 (Property Condition Standards), by failing to make two units suitable for occupancy and available for rent.
9. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015 by failing to execute required lease provisions for 9 units.

10. Respondent violated representations made on page 1 of the LURA and 10 TEX. ADMIN. CODE §10.611 in 2015 by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 5 units.
11. Respondent violated 10 TEX. ADMIN. CODE §10.612 by failing to annually collect Annual Eligibility Certification forms for 49 units.
12. 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.
13. 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.
14. 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.
15. An administrative penalty of \$62,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$62,000, subject to partial deferral as further ordered below.

IT IS FURTHER ORDERED that Flaza Jasaroski shall attend HTC Compliance Training and 1st Thursday Income Eligibility Training, and submit completion certificates for each to the Agency on or before August 26, 2016.

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as indicated in *Attachment 1*, and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before August 26, 2016.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in *Attachments 2* and *3* and submit full documentation of the corrections to TDHCA on or before August 26, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at *Attachment 4*, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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 a \$42,000 portion of the assessed administrative penalty and that amount will be deferred and forgiven. In that circumstance, only the remaining \$20,000 portion of the administrative penalty shall be due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, then the full administrative penalty in the amount of \$62,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS

§

§

COUNTY OF _____§

BEFORE ME, _____, 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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the 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 _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

2009 UPCS Violations:

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.

2015 UPCS Violations:

Inspectable Area Inspectable Item	Deficiency	1	2	3	Comments
Avalon Apartments 1215 North Cooper Street Arlington, TX 76011					
Building: Bldg 1-A					
Unit:					
Building Exterior					
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels			L3	cover missing on gfi outlet, exposed wires
Building Systems					
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels			L3	6 knockouts missing on distribution boxes, exposed wires
Unit: 127					
Bathroom	Lavatory Sink - Damaged/Missing	L1			sink stopper missing
Electrical	GFI Inoperable		L3		bedroom gfi will not test
Kitchen	Range/Stove - Missing/Damaged/Inoperable		L2		one burner inop
Outlets/Switches	Missing/Broken Cover Plates	L1			kitchen outlet cover damaged
Smoke Detector	Missing/Inoperable			L3	hall unplugged
Unit: 228-noky-alt230					
Bathroom	Lavatory Sink - Damaged/Missing	L1			sink stopper disconnected
Electrical	GFI Inoperable			L3	bedroom gfi will not test
Smoke Detector	Missing/Inoperable			L3	hall unplugged
Building: Bldg 2-B					
Unit: 117					
Bathroom	Plumbing - Leaking Faucet/Pipes	L1			bathroom faucet leaking
Bathroom	Lavatory Sink - Damaged/Missing	L1			sink stopper missing
Doors	Damaged Hardware/Locks			L3	entry dead bolt missing
Outlets/Switches	Missing/Broken Cover Plates	L1			kitchen outlet cover damaged
Smoke Detector	Missing/Inoperable			L3	hall, unplugged
Unit: 220-vc1080dy					
Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing			L3	toilet will not flush
Doors	Missing Door		L2		bedroom door missing
Electrical	Missing Breakers/Fuses			L3	breakers missing
Health & Safety	Flammable/Combustible Materials - Improperly Stored			L3	gas can in kitchen, improperly stored flammables corrected during inspection
Kitchen	Refrigerator-Missing/Damaged/Inoperable			L3	missing
Kitchen	Dishwasher/Garbage Disposal - Inoperable		L2		missing
Kitchen	Range/Stove - Missing/Damaged/Inoperable			L3	missing
Lighting	Missing/Inoperable Fixture			L3	ceiling light fixture missing

Building: Bldg 3-C			
Unit			
Building Systems			
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	2 knockouts missing on distribution box, exposed wires
Unit: 108-vc1080dy			
Bathroom	Lavatory Sink - Damaged/Missing	L3	missing
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L3	missing
Kitchen	Refrigerator-Missing/Damaged/Inoperable	L3	missing
Unit: 201-vc 730dy			
Bathroom	Lavatory Sink - Damaged/Missing	L3	missing
Doors	Damaged Hardware/Locks	L3	bathroom and closet door knobs missing
Health & Safety	Hazards - Sharp Edges	L3	broken glass on floor presents sharp edges
Kitchen	Refrigerator-Missing/Damaged/Inoperable	L3	missing
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L3	missing
Kitchen	Dishwasher/Garbage Disposal - Inoperable	L2	missing
Kitchen	Sink - Damaged/Missing	L3	missing
Building: Bldg 4-D			
Unit			
Building Systems			
Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	2 knockouts missing on bottom of distribution box, exposed wires
Unit: 138			
Bathroom	Lavatory Sink - Damaged/Missing	L1	sink stopper disconnected
Bathroom	Plumbing - Leaking Faucet/Pipes	L3	hot water faucet missing
Electrical	Missing Breakers/Fuses	L3	breaker missing, exposed wires
Electrical	GFI Inoperable	L3	bathroom gfi will not test
Smoke Detector	Missing/Inoperable	L3	hall, unplugged
Unit: 238			
Kitchen	Range/Stove - Missing/Damaged/Inoperable	L2	one burner inop
Smoke Detector	Missing/Inoperable	L3	hall unplugged

Instruction: Each 2009 and 2015 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 26, 2016. Assistance regarding how to submit via CMTS is available at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

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.

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Attachment 2

Tenant File Instructions

Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

Technical support and training presentations are available at the following links:

Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>

You must submit the following fully acceptable file monitoring documentation via CMTS on or before August 26, 2016. Assistance regarding how to submit via CMTS is available at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.

1. Part B of the 2011 and 2012 Annual Owner's Compliance Reports. Reports are submitted within CMTS at <https://pox.tdhca.state.tx.us/aims2/pox>. Technical support and training resources are available at: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>. If you have technical problems with the system, please contact Staphanie Naquin, Director of Multifamily Compliance, at 512.475.2330 or stephanie.naquin@tdhca.state.tx.us, but please do not contact her until you have reviewed the technical support;
2. All parts of the 2014 Annual Owner's Compliance Reports. See above for instructions and technical support.
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. In addition:
 - i. If the unit is occupied as of August 26, 2016, 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 Tenant Rights and Resources Guide Acknowledgment.
 - ii. If the unit is vacant as of August 26, 2016, 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 Tenant Rights and Resources Guide Acknowledgment. *Receipt of the tenant file after August 26, 2016 is acceptable for this circumstance provided that Requirement 3(a) above has been fulfilled and the unit is vacant as of August 26, 2016.*

4. 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 21 of <http://www.tdhca.state.tx.us/asset-management/docs/16-PostAwardActivitiesManual.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 26, 2016, 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 Tenant Rights and Resources Guide Acknowledgment.
2. If the unit is vacant as of August 26, 2016, 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 Tenant Rights and Resources Guide Acknowledgment. *Receipt after August 26, 2016 is acceptable for this circumstance provided that Requirement 4(b)i. above has been fulfilled and the unit is vacant as of August 26, 2016.*

5. Lease violations for units 129, 132, 227, 115, 117, 110, 137, 237, and 241: 10 TAC §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 in time for you to implement the form as required by this Order.

6. Pre-onsite documentation violation. Submit all of the following documentation:

- (a) Entrance Interview Questionnaire (form is available via CMTS);
- (b) Unit Status Report (USR) reporting current occupancy (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) Delinquent quarterly vacancy reports. Quarterly vacancy reports are due on the 10th of January, April, July, and October. You have not submitted quarterly vacancy reports since 2010 and that data must be brought up to date before you use the Affirmative Marketing Web Tool discussed below. That tool uses the data entered in your quarterly vacancy report for its calculations. CMTS does not collect historical data for quarterly vacancy reports, so you do not need to collect past information to complete this requirement. Enter your current occupancy data into CMTS for the quarterly vacancy report that was due on 10/10/2010, then submit. Once submitted, the report for January 2011 will be released by the system. Submit the current occupancy data again. Continue submitting through the current report due.
- (e) 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. This plan may be completed using any version of HUD Form 935.2A; the most recent version of the form is available at <http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.pdf>. Submit updated plan following all requirements of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), along with evidence of outreach marketing efforts to selected groups identified in the plan. The Affirmative Marketing Web Tool referenced in the rule in order to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. The plan must identify those groups that are least likely to apply, along with specific media and community contacts that reach those groups designated as least likely to apply. Persons with disabilities must always be selected as a group least likely to apply.
- (f) Written leasing criteria, including required deposits and refund policy, and wait list policy. These criteria must meet all requirements of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which we recommend using as a checklist;
- (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.

[remainder of page intentionally blank]

7. 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 successful onsite review conducted on July 25, 2012, follow the instructions below.

Unit # 110	Bldg. # C	BIN # TX9100160	
Finding:	Household income above income limit upon initial occupancy		
Noncompliance Date	04/01/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	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.		
Corrective Action	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.		
Supplemental Corrective Action	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.		
Unit # 115	Bldg. # B	BIN # TX9100158	
Finding:	Household income above income limit upon initial occupancy		
Noncompliance Date	04/01/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	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.		
Corrective Action	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.		
Supplemental Corrective Action	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.		
Unit # 129	Bldg. # A	BIN # TX9100158	
Finding:	Household income above income limit upon initial occupancy		
Noncompliance Date	02/01/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	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.		
Corrective Action	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.		
Supplemental Corrective Action	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.		
Unit # 132	Bldg. # A	BIN # TX9100158	
Finding:	Household income above income limit upon initial occupancy		
Noncompliance Date	04/01/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	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.		
Corrective Action	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.		
Supplemental Corrective Action	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.		
Unit # 227	Bldg. # A	BIN # TX9100158	
Finding:	Household income above income limit upon initial occupancy		
Noncompliance Date	04/01/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	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.		
Corrective Action	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.		
Supplemental Corrective Action	Households to sign and date initial Income Certification form. Do not back date. Submit a copy to the Department for review.		

[instruction continued from prior page] 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.

8. **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 successful onsite review 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.

Circumstance with respect to units listed above	Required Action
If unit is occupied by a new qualified household that occupied the unit after July 25, 2012	Submit the full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	<ol style="list-style-type: none"> 1. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. <i>Receipt after 8/26/2016 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>
If unit is occupied by a nonqualified household with a non-expired lease	<ol style="list-style-type: none"> 1. Issue a nonrenewal notice to tenant and provide a copy to TDHCA. 2. As soon as the unit become available and is occupied by a qualified household, you must submit the full tenant file*. <i>Receipt after 8/26/2016 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>
If unit is vacant	<ol style="list-style-type: none"> 1. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA. 2. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. <i>Receipt after 8/26/2016 is acceptable for this circumstance provided that Requirement 1 is fulfilled.</i>

**A full tenant file must include, at a minimum, a tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum and Tenant Rights and Resources Guide Acknowledgment. See Attachment 3 for brief explanations of each if you are unfamiliar.*

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. You are required to attend First Thursday Training, which will provide a fuller 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. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the 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.

- a. **Tenant Rights and Resources Guide:** Replaced Fair Housing Disclosure Notice and Notice of Amenities and Services per 10 Texas. Admin. Code §10.613, which became effective 1/9/2015. Customize Tenant Rights and Resources Guide available at this link <http://www.tdhca.state.tx.us/pmcomp/forms.htm> to fit your property (specifically, information regarding common amenities, unit amenities, and required services). Post a laminated copy of the customized guide in a common area of the leasing office. Customized guide must be provided to each household during the application process (but no more than 120 days prior to initial lease execution) and upon any subsequent changes to common amenities, unit amenities, and services. If you have a file violation that requires submission of a full tenant file, you will be expected to include this form unless the forms it replaced (the Fair Housing Disclosure Notice and Notice of Amenities and Services) were timely signed.

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Attachment 4:

Texas Administrative Code

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

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1b

BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning West Gate Apartments (HOME 535259 / CMTS 2702)

RECOMMENDED ACTION

WHEREAS, West Gate Apartments, owned by The Housing Authority of the City of Tahoka, Texas, ("Owner") has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

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

WHEREAS, all findings that had been referred for an administrative penalty were resolved informally before consideration by the Enforcement Committee; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order, stipulating that violations occurred at West Gate Apartments (HOME 535259 / CMTS 2702), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

The Housing Authority of the City of Tahoka, Texas ("Owner") is the owner of West Gate ("Property"), a low income apartment complex composed of 24 units, located in Tahoka, Lynn County. The Property is subject to a Land Use Restriction Agreement ("LURA") signed in 1999 in consideration for a HOME loan award totaling \$360,000 to rehabilitate the Property. Bill Miller is the executive director for the owner. There are no other contacts in CMTS and the organization is not registered with the Texas Secretary of State because it is a public housing authority. The property is self-managed by the housing authority.

The following compliance violations identified during the 2015 file monitoring review, were referred for an administrative penalty, and were resolved after intervention by the Enforcement Committee:

1. Affirmative Marketing Plan violation;
2. Lease violations relating to (a) failure to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, (b) failure to provide a Notice of Amenities and Services to 4 units; and (c) failure to provide a Fair Housing Disclosure Notice to 2 units;
3. Tenant income recertification violation for 1 unit; and
4. Utility Allowance Violation.

Owner was previously referred for an administrative penalty for file monitoring violations, but the referral was closed informally when full corrections were received. It is not appropriate to close the current administrative penalty referral with a warning letter because of the referral history. However, corrective documentation was received before the informal conference to address all violations, and Owner has agreed to sign an Agreed Final Order stipulating that violations had occurred, and assessing an administrative penalty of \$0 for noncompliance at West Gate.

Consistent with direction from the Department's Enforcement Committee, an Agreed Final Order stipulating that a violation occurred is recommended, with an administrative penalty in the amount of \$0. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
THE HOUSING AUTHORITY OF
THE CITY OF TAHOKA, TEXAS
WITH RESPECT TO
WEST GATE APARTMENTS
(HOME FILE # 535259 / CMTS # 2702)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 **THE HOUSING AUTHORITY OF THE CITY OF TAHOKA, TEXAS**, a public housing authority ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1999, Respondent was awarded an allocation of HOME funds by the Board, in the total amount of \$360,000 to rehabilitate and operate West Gate Apartments ("Property") (HTC file No. 535259 / CMTS No. 2702 / LDLD No. 237).

2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective January 25, 1999, and filed of record at Volume 237, Page 109 of the Official Public Records of Real Property of Lynn County, Texas (“Records”).
3. Respondent is a public housing authority that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. An on-site monitoring review was conducted on May 19, 2015, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an October 22, 2015, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to an administrative penalty informal conference notice, but the plan omitted the required marketing materials to prove that the development was carrying out marketing to the disabled. The violation was corrected on January 25, 2016, 95 days past the deadline, after intervention by the Enforcement Committee;
 - b. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation was corrected on January 25, 2016, 95 days past the deadline, after intervention by the Enforcement Committee;
 - c. Respondent failed to provide a Notice of Amenities and Services to units 2109, 2112, 2117, and 2120, violations of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which, at the time of move-in for these units during 2014, required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a “Tenant Rights and

¹ 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.

Resources Guide". The violation was corrected on January 13, 2016, 83 days past the deadline, after intervention by the Enforcement Committee;

- d. Respondent failed to provide the Fair Housing Disclosure Notice for units 2117 and 2121, a violation of 10 TEX. ADMIN. CODE §10.612, which, at the time of move-in for each unit during 2014, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a "Tenant Rights and Resources Guide". The violation was corrected on January 13, 2016, 83 days past the deadline, after intervention by the Enforcement Committee;
 - e. Respondent failed to provide a tenant income recertification for unit 2103, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires recertifications. The violation was corrected on January 13, 2016, 83 days past the deadline, after intervention by the Enforcement Committee;
 - f. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. The violation was corrected on January 27, 2016, 97 days past the deadline, after intervention by the Enforcement Committee.
5. All of the above violations have been resolved.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
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 §10.617 in 2015, by failing to provide a complete affirmative marketing plan.
4. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
5. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute the Notice of Amenities and Services for four units;
6. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for two units;
7. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2014, by failing to execute the Notice of Amenities and Services for units 2109, 2112, 2117, 2120;

8. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2015 by failing to provide a tenant income recertification to ensure qualification for the program;
9. Respondent violated 10 TEX. ADMIN. CODE §10.614 in 2015 by failing to properly calculate a utility allowance;
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 \$0 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

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 \$0.

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

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

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS

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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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

**THE HOUSING AUTHORITY OF THE CITY OF
TAHOKA, TEXAS, a public housing authority**

By: _____
Name: _____
Title: _____

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1:

Texas Administrative Code

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

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

~~(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.~~

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1c

BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Bristol Court Apartments (HTC 94021 / CMTS 1218)

RECOMMENDED ACTION

WHEREAS, Bristol Court Apartments (HTC 94021 / CMTS 1218), owned by KVA Investments, LLC (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on February 23, 2016, Owner’s representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$12,500, with \$2,500 to be paid within 30 days of signature and the remaining \$10,000 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before June 27, 2016;

WHEREAS, unresolved compliance findings include: all Uniform Physical Condition Standards (“UPCS”) violations identified during the 2015 inspection; four Household Income Above Limit Upon Initial Occupancy violations; five lease violations relating to required lease notices; one violation for failure to execute required lease language for one unit; and an Affirmative Marketing Plan violation; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$12,500, subject to partial forgiveness as outlined above for noncompliance at Bristol Court Apartments (HTC 94021 / CMTS 1218), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

KVA Investments, LLC ("Owner") is the owner of Bristol Court Apartments ("Property"), a low income apartment complex composed of 164 units, located in Houston, Harris County. Records of the Texas Secretary of State list Kim Thanh H. Vu, Angela Pierce, and Vin C. Pierce as managers/directors of KVA Investments, LLC. CMTS lists Kim-thanh hue Vu, Tina Thanh Nguyen as the primary contacts for KVA Investments, LLC. The property is self managed.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by a prior owner in 1994 in consideration for a housing tax credit allocation in the amount of \$168,032 to acquire, rehabilitate and operate the Property.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring, violations, and UPCS violations, but referrals were closed informally when full corrections were received. Owner has been referred again, but no corrections were received as of the informal conference date. The informal conference highlighted the owner's lack of program knowledge and need for training regarding how to complete an acceptable tenant file.

The following compliance violations identified during 2015 were referred for an administrative penalty and are unresolved:

1. 2015 UPCS violations;
2. Household income violations for units 510, 1003, 1004, 1416;
3. Lease violations relating to failure to provide and execute required notices, including:
 - a. Failure to post the Tenant Rights and Resources Guide in a common area in the office;
 - b. Failure to execute the Tenant Rights and Resources Guide Acknowledgment for unit 1415;
 - c. Failure to execute the Notice of Amenities and Services for unit 1416; and
 - d. Failure to execute the Fair Housing Disclosure Notice for units 510 and 1416.
4. Lease violation relating to failure to execute required no lock-out and good cause eviction language in the lease for unit 1415;
5. Failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts.

Owner participated in an informal conference with the Enforcement Committee on February 23, 2016, and agreed to sign an Agreed Final Order with the following terms:

1. A \$12,500 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$2,500 portion of the administrative penalty on or before May 30, 2016;
3. Owner must correct the UPCS and file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before June 27, 2016;
4. Owner must attend First Thursday Income Eligibility Training and HTC Compliance Training, then provide copies of completion certificates to TDHCA, on or before June 27, 2016.

5. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$10,000 will be forgiven; and
6. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$12,500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
KVA INVESTMENTS, LLC
WITH RESPECT TO
BRISTOL COURT APARTMENTS
(HTC FILE # 94021 / CMTS # 1218)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 **KVA INVESTMENTS, LLC**, a Texas limited liability company ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1994, Bristol Partners, L.P. ("Prior Owner") was awarded an allocation of Low Income Housing Tax Credits by the Board, in an amount of \$168,032 to acquire, rehabilitate, and operate Bristol Court Apartments ("Property") (HTC file No. 94021 / CMTS No. 1218 / LDLD No. 29).
2. Prior Owner signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 31, 1994, and filed of record under Clerk's File Number R-

273605 and refiled under Clerk's File Number R-316658 of the Official Public Records of Real Property of Harris County, Texas ("Records"), as amended by a First Amendment executed on September 19, 1997, and filed in the Records under Clerk's File Number S681498 and refiled under Clerk's File Number V261704 of the Records, as amended by a Second Amendment executed on February 7, 2000, but not filed in the Records. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.

3. Respondent took ownership of the Property on November 30, 2007 and is subject to the continuing requirements of the LURA.
4. Respondent is a Texas limited liability company that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on July 22, 2015. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE §10.621 (Property Condition Standards). Notifications of noncompliance were sent and a November 4, 2015, corrective action deadline was set. No response was submitted and the violations at *Attachment 1* remain unresolved.
6. An on-site monitoring review was conducted on July 17, 2015, 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 November 17, 2015, corrective action deadline was set. No response was submitted and the following violations remain unresolved:
 - a. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 510, 1003, 1004, and 1416, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation And Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program;
 - b. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services;

¹ 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.

- c. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 1415, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services;
- d. Respondent failed to provide a Notice of Amenities and Services to unit 1416, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which, at the time of move-in for this unit during 2014, required owners to provide to each household, at the time of execution of an initial lease and whenever there was a subsequent change in amenities and services, a notice describing those amenities and services. This form has since been combined with the Fair Housing Disclosure Notice into a replacement document called a "Tenant Rights and Resources Guide", which also has not been provided;
- e. Respondent failed to provide the Fair Housing Disclosure Notice for units 510 and 1416, a violation of 10 TEX. ADMIN. CODE §10.612 (Lease Requirements), which, at the time of move-in for each unit during 2014, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a "Tenant Rights and Resources Guide", which also has not been provided;
- f. Respondent failed to execute required lease provisions or exclude prohibited lease language for unit 1415, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process;
- g. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), which requires developments to maintain an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. At the time of monitoring, there was no affirmative marketing plan or evidence of outreach marketing efforts.

7. All violations listed above remain outstanding at the time of this order.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to TEX. GOV'T CODE §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
2. Respondent is a "housing sponsor" as that term is defined in TEX. GOV'T CODE §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.621 in 2015 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.²
5. Respondent violated 10 TEX. ADMIN. CODE §10.611 and Section 4 of the LURA in 2015, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for 4 units.
6. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to post the Tenant Rights and Resources Guide in a common area in the leasing office.
7. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to provide the Tenant Rights and Resources Guide and obtain signed Acknowledgments for one unit.
8. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for two units.
9. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Notice of Amenities and Services during the appropriate time frame for one unit.
10. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to execute required lease language for one unit.
11. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2015, by failing to provide a complete affirmative marketing plan.
12. 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.

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.621(a)

13. 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.
14. 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.
15. An administrative penalty of \$12,500 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in TEX. GOV'T CODE §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$12,500, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$2,500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 30, 2016.

IT IS FURTHER ORDERED that all onsite property management staff at Bristol Court Apartments, with the exception of maintenance personnel, shall attend First Thursday Income Eligibility Training and HTC Compliance Training, and submit certificates of completion, on or before June 27, 2016. (Registration for First Thursday Training: <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>; Registration for HTC Compliance Training: <http://www.taa.org/member/education/registerforprograms/>)

IT IS FURTHER ORDERED that Respondent shall repair all UPCS violations as indicated in Attachment 1 and submit work orders in the correct format, and including all necessary parts, to document the corrections to TDHCA on or before June 27, 2016.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachments 2 through 4, and submit full documentation of the corrections to TDHCA on or before June 27, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 TEX. ADMIN. CODE 10.406, a copy of which is included at Attachment 5, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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 remaining \$10,000 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 \$10,000 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS

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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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

KVA INVESTMENTS, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

UPCS Instructions

1. UPCS violations that must be corrected:

Defects Found						
Deficiency	L1	L2	L3	Deficiency Title	Images	Deficiency Notes
Site:						
Fencing and Gates			x	Holes/Missing Sections/Damaged/Falling/Leaning (Security/Safety)	0	vehicle gate inoperable x2
Health & Safety			x	Hazards—Tripping	0	sidewalk uneven; building 5, 7
Market Appeal		x		Graffiti	0	graffiti on trash dumpster graffiti on transformer building 14
Refuse Disposal		x		Broken/Damaged Enclosure—Inadequate Outside Storage Space.	0	trash not in container multiple locations throughout property
Bldg 12:						
1404						
Kitchen		x		Dishwasher/Garbage Disposal—Inoperable	0	dishwasher not functioning;
1413						
Health & Safety			x	Emergency Fire Exits—Emergency/Fire Exits Blocked/Unusable	0	Bedroom 1; window screwed closed repaired during inspection;
Kitchen	x			Refrigerator—Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;
Lighting	x			Missing/Inoperable Fixture	0	Bedroom 1; closet
Outlets/Switches			x	Missing/Broken Cover Plates	0	Outlet plate missing; laundry
Smoke Detector			x	Missing/Inoperable	0	smoke detector is not functioning; repaired during inspection;
Bldg 7:						
994						
Doors			x	Damaged Hardware/Locks	0	Striker plate misaligned/missing ;Bathroom 1;
Kitchen		x		Dishwasher/Garbage Disposal—Inoperable	0	dishwasher not functioning;
Building Exterior						
Health & Safety			x	Exposed Wires/Open Panels	0	holes in breaker panel
Bldg 1:						
301 for 303						
Doors		x		Damaged Hardware/Locks	0	Striker plate misaligned/missing ;Bedroom 1;
Health & Safety			x	Emergency Fire Exits—Emergency/Fire Exits Blocked/Unusable	0	Bedroom 1; windows screwed closed blocking egress repaired during inspection;
Kitchen		x		Dishwasher/Garbage Disposal—Inoperable	0	garbage disposal not functioning;
Kitchen			x	Leaking Faucet/Pipes	0	Faucet leaks causing damage;
Kitchen	x			Refrigerator—Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;
Smoke Detector			x	Missing/Inoperable	0	Living Room; smoke detector is not functioning; repaired during inspection;
312						
Kitchen	x			Refrigerator—Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;
Building Exterior						
Health & Safety			x	Exposed Wires/Open Panels	0	hole in electrical panel
Bldg 4:						
609 for 611						
Electrical System			x	GFI—Inoperable	0	arcfault inoperable

Deficiency	L1	L2	L3	Deficiency Title	Images	Deficiency Notes
Smoke Detector			x	Missing/Inoperable	0	smoke detector is not functioning;
Building Systems						
Fire Protection			x	Missing/Damaged/Expired Extinguishers	0	missing 609
Bldg 3:						
510						
Smoke Detector			x	Missing/Inoperable	0	Bedroom 1:smoke detector is not functioning;repaired during inspection; Living Room:smoke detector is not functioning;
Building Systems						
Fire Protection			x	Missing/Damaged/Expired Extinguishers	0	discharged 510
office :						
Building Systems						
Fire Protection			x	Missing/Damaged/Expired Extinguishers	0	missing tag
Common Areas: Storage						
Lighting			x	Missing/Damaged/Inoperable Fixture	0	missing fixture
Bldg 8:						
1010						
Kitchen	x			Range Hood/Exhaust Fans--Excessive Grease/Inoperable	0	excessive grease
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;
Smoke Detector			x	Missing/Inoperable	0	Smoke detector is missing;Bedroom 1; repaired during inspection;
Bldg 5:						
701						
Ceiling	x			Mold/Mildew/Water Stains/Water Damage	0	Bedroom 1:
Doors			x	Damaged Hardware/Locks	0	Striker plate misaligned/missing ; entry
Bldg 13:						
1505						
Doors		x		Damaged Hardware/Locks	0	Striker plate misaligned/missing ;Bedroom 1;
Health & Safety			x	Infestation--Insects	0	Roaches;
Kitchen		x		Dishwasher/Garbage Disposal--Inoperable	0	dishwasher not functioning;
Kitchen			x	Leaking Faucet/Pipes	0	trap leaking;
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;
1515						
Electrical System			x	Missing Breakers/Fuses	0	missing breaker spacers
Kitchen		x		Range/Stove--Missing/Damaged/Inoperable	0	Left/front burner does not function;
Bldg 9:						
1102						
Doors			x	Damaged Hardware/Locks	0	Handle/knob loose/damaged ;Bathroom 1;
Doors			x	Damaged Surface (Holes/Paint/Rust/Glass)	0	peeling paint; entry
Health & Safety			x	Infestation--Insects	0	Roaches;
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;
Lighting		x		Missing/Inoperable Fixture	0	Bedroom 1: closet Bedroom 2: closet
Outlets/Switches			x	Missing/Broken Cover Plates	0	Outlet plate missing; living room
Bldg 2:						
409						
Doors			x	Damaged Surface (Holes/Paint/Rust/Glass)	0	hole(s);Hallway/Hall; hole(s);Bedroom 1;
Kitchen		x		Dishwasher/Garbage Disposal--Inoperable	0	dishwasher not functioning;
Kitchen	x			Refrigerator-Missing/Damaged/Inoperable	0	Fresh food seal needs replaced;

Bldg #:			
808			
Bathroom	x		Leaking Faucet/Pipes
Kitchen		x	Dishwasher/Garbage Disposal—Inoperable
			<input type="checkbox"/> tub faucet drips ; <input type="checkbox"/> dishwasher not functioning;

2. Prepare corrective documentation for each violation listed above following these guidelines:
<http://www.tdhca.state.tx.us/pmcomp/inspections/docs/UPCS-WorkOrderGuidelines.pdf>
3. Submit corrective documentation via CMTS following the instructions at
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf> on or before June 27, 2016, then email Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to let her know that the submission is ready for review

Attachment 2

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. Technical support and training presentations are available at the following links:

Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>

4. **Quarterly vacancy reports** – You are required to submit quarterly vacancy reports on the 10th of January, April, July, and October. The report has not been submitted since 2010. This report is to be completed via CMTS at <https://pox.tdhca.state.tx.us/aims2/pox>. The system does not collect historical data for this report, therefore, please enter your current occupancy data for the quarterly vacancy report that was due for 1/10/2010 and submit. Once submitted, the 4/10/2010 report will become available. Submit current occupancy data again. Continue through the current report due.
5. **Affirmative marketing plan** – The rule at 10 TEX. ADMIN. CODE §10.617 has changed and TDHCA staff recommends using the rule as a checklist.

Complete affirmative marketing plan using any version of HUD Form 935.2A. Submit updated plan following all requirements of 10 TEX. ADMIN. CODE §10.617, along with evidence of outreach marketing efforts to selected groups identified in the plan. The Affirmative Marketing Web Tool referenced in the rule in order to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Before you can use that tool, however, you must first submit your delinquent Quarterly Vacancy Reports (see #4 above) that are due from 1/10/2010 to present because the tool uses that data for its calculations. The plan must identify those groups that are least likely to apply, along with specific media and community contacts that reach those groups designated as least likely to apply. Persons with disabilities must always be selected as a group least likely to apply.

6. Tenant Rights and Resources Guide / Fair Housing Disclosure Notice / Notice of Amenities and Services – The Fair Housing Disclosure Notice and Notice of Amenities and Services have been combined into a single form called the Tenants Rights and Resource Guide, as indicated at 10 TEX. ADMIN. CODE §10.613(k).

Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k). Post a laminated copy of the customized Tenants Rights and Resource Guide in a common area of the office and submit both a copy of that customized guide, and a letter certifying that the laminated guide was posted. Provide a copy of the Tenant Rights and Resources Guide to the households in units 510, 1415, and 1416, and have them sign Tenants Rights and Resource Guide Acknowledgments. Submit copies of the signed acknowledgments. If the affected tenant has moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.

7. Follow the instructions in the table below with respect to tenant file violations for units 510, 1003, 1004, and 1416:

Circumstance with respect to units listed above	Instruction
If unit is occupied by a qualified household	Follow the instructions that are outlined separately for each unit in Attachment 3. If the circumstances outlined in the instruction letter at Attachment 3 no longer exist, follow the instructions below.
If unit is occupied by a new qualified household	Submit the full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	<p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 2/29/2015 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If unit is occupied by a nonqualified household with a non-expired lease	<p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 2/29/2015 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If unit has been vacant <i>more than</i> 30 days	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 2/29/2015 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>

If unit has been vacant <i>less than</i> 30 days	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 2/29/2015 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>
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**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment. See Attachment 4 for further guidance on each tenant file component.*

Attachment 3

Tenant File Violation Instructions for units 510, 1003, 1004, 1416:

UNIT FINDINGS			
Unit # 510	Bldg. # 3	BIN # TX9400245	
Finding	Household income above income limit upon initial occupancy / Program Unit not leased to Low-income household		
Noncompliance Date	09/01/2013	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	The Department was unable to determine household eligibility at move in. There were no verifications of income or assets in the file to document eligibility at move-in.		
Corrective Action	When the unit becomes available, occupy it with a qualified household. Submit to the Department to review all: application(s), verification of income, assets, and student status, Tenant Rights and Resource Guide acknowledgement form, Income Certification form, first and signatory page of the lease, and all required addendums. If circumstances have changed for the current household, the development can certify the household under current rent and income limits and submit to the Department all: application(s), verification of income, assets, and student status, Tenant Rights and Resource Guide acknowledgement form, Income Certification form, first and signatory page of the lease, and all required addendums.		
Unit # 1003	Bldg. # 8	BIN # TX9400250	
Finding	Household income above income limit upon initial occupancy / Program Unit not leased to Low-income household		
Noncompliance Date	08/18/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	The Department determined that the household was over the income limit at initial occupancy. There was no Income Certification form executed in the file at move in. The income verification verified that the household was over the income limit at initial occupancy for a household of one at \$28,140. The monitor's calculation of income was \$38,821.12.		
Corrective Action	When the unit becomes available, occupy it with a qualified household. Submit to the Department to review all: application(s), verification of income, assets, and student status, Tenant Rights and Resource Guide acknowledgement form, Income Certification form, first and signatory page of the lease, and all required addendums. If circumstances have changed for the current household, the development can certify the household under current rent and income limits and submit to the Department all: application(s), verification of income, assets, and student status, Tenant Rights and Resource Guide acknowledgement form, Income Certification form, first and signatory page of the lease, and all required addendums.		
Unit # 1004	Bldg. # 8	BIN # TX9400250	
Finding	Household income above income limit upon initial occupancy / Program Unit not leased to Low-income household		
Noncompliance Date	07/09/2012	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	The Department determined that the household was over the income limit at initial occupancy. The pay check stubs reflected a higher year to date(YTD) amount and when the YTD amount was annualized, it put the household over income.		
Corrective Action	When the unit becomes available, occupy it with a qualified household. Submit to the Department to review all: application(s), verification of income, assets, and student status, Tenant Rights and Resource Guide acknowledgement form, Income Certification form, first and signatory page of the lease, and all required addendums. If circumstances have changed for the current household, the development can certify the household under current rent and income limits and submit to the Department all: application(s), verification of income, assets, and student status, Tenant Rights and Resource Guide acknowledgement form, Income Certification form, first and signatory page of the lease, and all required addendums.		
Unit # 1415	Bldg. # 12	BIN # TX9400254	
Finding	Noncompliance with lease requirements described in 10.613 of this subchapter		
Noncompliance Date	04/01/2015	Current Status Uncorrected - Not Reportable to IRS	Correction Date
Reason	10TAC§10.613(a) and (e) states that: (a) "For HTC Developments, IRS Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low-income households for other than good cause throughout the entire Affordability Period, and for three(3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007, shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited." (e) "Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum. The above listed file did not have the required language in the lease or lease addendum.		
Corrective Action	Provide the household the required lock out/good cause language and place the executed copy in the household's file. Submit to the Department a copy of the executed form and the 1st page of the lease contract.		

Attachment 4

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. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
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. **Tenant Rights and Resources Guide**: As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, correction will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 5:

Texas Administrative Code

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

(a) **Ownership Transfer Notification.** All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) **Requirement.** Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) **Transfers Prior to 8609 Issuance or Construction Completion.** Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) **Non-Profit Organizations.** If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and

Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

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BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding the adoption of Agreed Final Orders concerning Sphinx at Delafield Villas (HTC 04419 / BOND 04419B / CMTS 4057)

RECOMMENDED ACTION

WHEREAS, Sphinx at Delafield Villas (“Property”), owned by St. Augustine Villas Housing, L.P. (“Owner”), has a history of uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on March 29, 2016, owner’s representatives met with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$750;

WHEREAS, the supportive service finding that was referred for an administrative penalty has been fully resolved; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$750, subject to partial forgiveness as outlined above for noncompliance at Sphinx at Delafield (HTC 04419 / BOND 04419B / CMTS 4057), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

St. Augustine Villas Housing, L.P. is the owner of Sphinx at Delafield Villas, a low income apartment complex composed of 204 units, located in Dallas. The property is subject to two land use restriction agreements. The HTC LURA was signed by owner in 2005 in consideration for an allocation of housing tax credits in the annual amount of \$729,073 and the BOND LURA was signed by the owner in 2004 in consideration for a bond issuance totaling \$11,380,000, to build and operate the property. Records of the Texas Secretary of State list Jay Oji as the manager/director of St. Augustine Villas Development, L.L.C., the general partner of St. Augustine Villas Housing, L.P. CMTS records list Joseph Agumadu (managing member of general partner), Charles Payne (compliance manager), and Natasha Knight (compliance manager). The property is self-managed by Sphinx Residential.

Owner was previously referred for an administrative penalty for file monitoring violations relating to supportive services, but the referral was closed informally when full corrections were received. Since the same violation was found again during 2015, the Enforcement Committee voted to assess an administrative penalty of \$750.

The following compliance violations were referred for an administrative penalty and have been resolved:

Violation for failure to provide evidence of sufficient monthly expenditures toward supportive services. Section 4(g) of the BOND LURA requires a supportive services expenditure of \$10 per unit per month, for a total of \$2,040 per month. Supportive services expenditures totaled only \$1,440 at the time of the monitoring review.

Owner representatives met with the Administrative Penalty Committee on March 29, 2016, and agreed to sign an Agreed Final Order calling for the maximum potential administrative penalty in the amount of \$750, to be paid on or before May 30, 2016.

Consistent with direction from the Department's Enforcement Committee, an administrative penalty in the amount of \$750 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
ST AUGUSTINE VILLAS HOUSING,
L.P. WITH RESPECT TO
SPHINX AT DELAFIELD VILLAS
(HTC #04419 / BOND # 4419 /
CMTS # 4057)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 **ST AUGUSTINE VILLAS HOUSING, L.P.**, a Texas limited partnership ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 2004, Respondent received two funding awards from the Board to build and operate Sphinx at Delafield Villas ("Property") (HTC file No. 4419 / Bond File No. 04419B / CMTS No. 4057 / LDLD No. 269):
 - a. An allocation of Low Income Housing Tax Credits, in an annual amount of \$729,073; and
 - b. A bond issuance totaling \$11,380,000.
2. Respondent signed a housing tax credit land use restriction agreement ("HTC LURA") regarding the Property. The LURA was effective November 10, 2005, and filed of record at Document Number 200503646906 of the Official Public Records of Real Property of Dallas County, Texas ("Records"), as amended by a First Amendment executed on August 27, 2007, and filed in the Records at Document Number 20070323622.
3. Respondent signed a Bond land use restriction agreement ("BOND LURA") regarding the Property. The LURA was effective July 1, 2004, and filed of record at Document Number 200402968507 of the Records.
4. Respondent is a Texas limited partnership that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

5. An on-site monitoring review was conducted on January 21, 2015, 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 June 25, 2015, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide supportive services, a violation of 4(g) of the BOND LURA, which requires a supportive services expenditure of \$10 per unit per month, for a total of \$2,040 per month. Supportive services expenditures totaled only \$1,440 at the time of the monitoring review. This is also a violation of 10 TEX. ADMIN. CODE §10.619 (Monitoring for Social Services), which outlines documentation that TDHCA monitors to verify that the LURA requirement is being met. The violation was corrected on November 11, 2015, 139 days past the deadline, after intervention by the Enforcement Committee.

¹ 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.

6. All of the above violations are resolved at the time of this order.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated Section 4(g) of the BOND LURA and 10 TEX. ADMIN. CODE §10.619 in 2015 by failing to provide supportive services.
5. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
6. 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.
7. 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.
8. An administrative penalty of \$750 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2, which became effective on November 19, 2014.

[remainder of page intentionally blank]

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 \$750.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay the \$750 administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 30, 2016, to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxe
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxe, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS

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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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

ST AUGUSTINE VILLAS HOUSING, L.P., a Texas limited partnership

By: _____

Name: _____

Title: _____

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

Texas Administrative Code

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

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) ~~Transfers Prior to 8609 Issuance or Construction Completion.~~ Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

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BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning North Athens (HOME 532340 / CMTS 2707)

RECOMMENDED ACTION

WHEREAS, North Athens (HOME 532340 / CMTS 2707), owned by North Athens Concerned Citizens, Inc. ("Owner"), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on March 29, 2016, an Owner's representative participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,000, with \$500 to be paid within 30 days of signature and the remaining \$1,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before June 27, 2016;

WHEREAS, unresolved compliance findings include three Household Income Above Limit Upon Initial Occupancy violations; two lease violations relating to required lease notices; and one tenant income certification violation; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$2,000, subject to partial forgiveness as outlined above for noncompliance at North Athens (HOME 532340 / CMTS 2707), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

North Athens Concerned Citizens, Inc. ("Owner") is the owner of North Athens ("Property"), a low income apartment complex composed of 10 units, located in Athens, Henderson County. Records of the Texas Secretary of State list the following officers for the organization: Willie E Sims (Executive Director), Evelyn Sims (Director / Secretary), JL Ingram (Director / Treasurer), Robert Edison (Director), Bonella Edison (Director), Lester Nevells (Director), Angelina Smith (Director), Beverly White (Director), Danyelle Reece (Director), Feliciah Brown (Director). CMTS lists Evelyn Sims, Aleciah Sims, and Feliciah Brown as the primary contacts for KVA Investments, LLC. The property is self managed.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed in 1995 in consideration for an interest free HOME loan in the amount of \$646,519 to build and operate the Property.

Owner was previously referred for an administrative penalty for failure to submit pre-on-site documentation, failure to appear for an onsite file monitoring review, and one Uniform Physical Condition Standards ("UPCS") violation. Corrections were submitted after an administrative penalty informal conference was set. The referred violations were resolved, but the submission uncovered multiple new violations and a new corrective deadline of 8/19/2015 was set. The Enforcement Committee considered the relevant factors during the scheduled 6/23/2015 informal conference and voted to send a warning letter, providing technical support, requiring owner representatives to attend training, and requiring submission of full corrections on or before the 8/19/2015 deadline that had been set by the Compliance Division. Corrections were submitted, but multiple violations remained unresolved and were referred to the Enforcement Committee.

The following compliance violations were referred for an administrative penalty and have been resolved:

1. Lease violation relating to failure to execute the Notice of Amenities and Services for unit 210
2. Violations for failure to provide annual tenant income certifications for units 801 and 803.

The following compliance violations were referred for an administrative penalty and are unresolved:

1. Lease violations relating to failure to provide and execute required notices, including:
 - a. Failure to execute the Tenant Rights and Resources Guide Acknowledgment for unit 207; and
 - b. Failure to execute the Notice of Amenities and Services for unit 209;
2. Violations for failure to provide annual tenant income certifications for unit 204; and
3. Household income violations for units 205, 207, and 210.

Owner participated in an informal conference with the Enforcement Committee on March 29, 2016, and agreed to sign an Agreed Final Order with the following terms:

1. A \$2,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$500 portion of the administrative penalty on or before May 30, 2016;

3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before June 27, 2016;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$1,500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$2,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
NORTH ATHENS CONCERNED CITIZENS
WITH RESPECT TO
NORTH ATHENS HOMES
(HOME FILE # 532340 / CMTS # 2707)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 **NORTH ATHENS CONCERNED CITIZENS**, a Texas nonprofit corporation (“Respondent”).

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1995, Respondent was awarded an interest free HOME loan allocation by the Board, in an amount of \$646,519 to build and operate North Athens Homes (“Property”) (HTC file No. 532340 / CMTS No. 2707 / LDLD No. 519).

2. Respondent signed a land use restriction agreement (“LURA”) regarding the Property. The LURA was effective December 22, 1995, and filed of record at Volume 1643, Page 673 of the Official Public Records of Real Property of Henderson County, Texas (“Records”).
3. Respondent is a Texas nonprofit corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. An on-site monitoring review was attempted on October 23, 2014, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. No staff or representatives for owner were present at the time of the onsite visit and findings were noted for failure to submit pre-onsite documentation and failure to allow monitoring. Notifications of noncompliance were sent and a March 17, 2015, corrective action deadline was set, however, the violations were not corrected before the deadline.
5. An administrative penalty informal conference was held on June 23, 2015, and owner submitted corrective documentation in response to the notice for that meeting. Compliance reviewed the documentation and was able to resolve the findings for the failure to submit pre-onsite documentation and failure to allow monitoring violations, however, the submissions uncovered multiple new violations. The Compliance Division sent new notices of noncompliance and an August 19, 2015, corrective action deadline was set. The Enforcement Committee considered the relevant factors during the June 23, 2015 informal conference and voted to send a warning letter, providing technical support, and requiring owner representatives to attend training and submit full corrections to the Compliance Division on or before the new August 19, 2015 deadline in order to avoid a potential administrative penalty. The following violations were not corrected before the August 19, 2015, corrective action deadline:
 - a. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 207, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to provide a copy of the Guide to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services;
 - b. Respondent failed to provide the Fair Housing Disclosure Notice for units 209 and 210, a violation of 10 TEX. ADMIN. CODE §10.612 (Lease Requirements), which, at the time of move-in for each unit, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a “Tenant Rights and Resources

¹ 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.

Guide". The violation for unit 210 was resolved on February 22, 2016, after intervention by the Enforcement Committee and 187 days after the deadline. The violation for unit 209 remains unresolved.

- c. Respondent failed to provide annual income certifications for units 204, 801, and 803, a violation of Section 4.3 of the LURA and 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which require developments to annually recertify income for each household. The violations for units 801 and 803 were resolved on February 22, 2016, after intervention by the Enforcement Committee and 187 days after the deadline. The violation for unit 204 remains unresolved.
 - d. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 205, 207, and 210, a violation of 10 TEX. ADMIN. CODE §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2.4 of the LURA, which require screening of tenants to ensure qualification for the program. All violations remain unresolved.
6. The following violations remain outstanding at the time of this order:
- a. Lease violation for failure to provide Tenant Rights and Resources Guide to unit 207, described in FOF #6a;
 - b. Lease violation for failure to provide Fair Housing Disclosure Notice to unit 209, described in FOF #6b;
 - c. Annual income certification violations for unit 204, described in FOF #6c; and
 - d. Household income violations for units 205, 207, and 210, described in FOF #6d.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TEX. ADMIN. CODE § 1.14 and 10 TEX. ADMIN. CODE Chapter 60, both of which were replaced by 10 TEX. ADMIN. CODE §2 as of November 19, 2014.
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 §10.613 in 2015, by failing to provide the Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 207;
4. Respondent violated 10 TEX. ADMIN. CODE §10.612 prior to 2015, by failing to timely execute the Fair Housing Disclosure Notice for units 209 and 210;
5. Respondent violated 10 TEX. ADMIN. CODE §10.612 and Section 4.3 of the LURA in 2015, by failing to provide tenant income certification and documentation to ensure qualification for the program for units 204, 801, and 803;
6. Respondent violated 10 TEX. ADMIN. CODE §10.612 and Section 2.4 of the LURA in 2015, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 205, 207, and 210;

7. Respondent violated 10 TEX. ADMIN. CODE §10.609 in 2013 by failing to collect Annual Eligibility Certifications.
8. 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.
9. 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.
10. 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.
11. An administrative penalty of \$2,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$2,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 30, 2016.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachments 1 and 2, and submit full documentation of the corrections to TDHCA on or before June 27, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at Attachment 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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 remaining assessed administrative penalty and the remaining \$1,500 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 shall be immediately due and payable to the Department. Such payment shall be made by

cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxe
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxe, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, _____, 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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

NORTH ATHENS CONCERNED CITIZENS, a Texas nonprofit corporation

By: _____

Name: Evelyn Sims

Title: Director

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. Technical support and training presentations are available at the following links:

Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaq.htm>

4. **Lease violations relating to the Notice of Amenities and Services and Tenant Rights and Resources Guide:** The notice has since been replaced by the Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k).

Uncorrectable findings: The households that triggered the findings for units 207 and 209 have vacated the units without completing the required form. Therefore, there is no corrective action available and the finding will remain outstanding. Please acknowledge this in your reply.

5. **Tenant income certification and documentation** – Respondent previously submitted incomplete documentation regarding unit 204. To correct, have the household complete a written certification on the Department's Income Certification form, where they will disclose their household composition, income, assets and student status. If the household is unable to provide accurate information or if the information disclosed indicates the household's income exceeds the 80% applicable income limit, then a full annual income recertification must be completed with source documentation.

Submit copies of the application(s), verifications of all sources of income and assets, Tenant Release and Consent form, *and* either (a) the household's self certified executed Income Certification form or (b) an annual income recertification. For additional guidance, please see 10 TEX. ADMIN. CODE §10.612(c)(2)-(3).

6. **Household income above limit violations** – Follow the instructions below with respect to units 205, 207, and 210, all of which are either vacant or occupied by new households.

Circumstance with respect to units listed above	Instruction
If unit is occupied by a new qualified household	Submit the full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	<p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If unit is occupied by a nonqualified household with a non-expired lease	<p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If unit has been vacant <i>more than</i> 30 days	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If unit has been vacant <i>less than</i> 30 days	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant Income Certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.*

Attachment 2

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. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
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. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, correction will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 3

Texas Administrative Code

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

(a) **Ownership Transfer Notification.** All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) **Requirement.** Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) **Transfers Prior to 8609 Issuance or Construction Completion.** Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) **Non-Profit Organizations.** If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

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BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning Villa de Reposo – Encinal (HOME 530201 / CMTS 4002)

RECOMMENDED ACTION

WHEREAS, Villa de Reposo – Encinal (HOME 530201 / CMTS 4002), owned by Community Services Agency of South Texas, Inc. (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on March 29, 2016, Owner’s representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$1,000, with \$500 to be paid within 30 days of Board approval of the Agreed Final Order and the remaining \$500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before June 27, 2016;

WHEREAS, unresolved compliance findings include: Affirmative Marketing Plan violation; one annual recertification violation, and one gross rent violation; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$1,000, subject to partial forgiveness as outlined above for noncompliance at Villa de Reposo – Encinal (HOME 530201 / CMTS 4002), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Community Services Agency of South Texas, Inc. ("Owner") is the owner of Villa de Reposo – Encinal ("Property"), a low income apartment complex composed of 16 units, located in Encinal, La Salle County. Records of the Texas Secretary of State list the following members and/or officers: Roel Rodriguez Jr (Director), Rodrigo Jaime (Director / President), Johnny Gloria (Director / Treasurer), Carlos Ramos (Secretary), Mike Uriegas (VP), Nora Rodriguez (Parliamentarian). CMTS lists David Ojeda (executive director) and Amy Hernandez (apartment manager) as the primary contact(s) for Owner. Also known to be associated with the organization is Sixto Ortega (compliance manager). The property is self managed.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by Owner in 2003 in consideration for an interest free HOME loan in the amount of \$907,009 to build and operate the Property.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring, violations, and UPCS violations, but referrals were closed informally when full corrections were received. Owner has been referred again and incomplete corrections were received before the informal conference date.

The following compliance violations identified during 2015 were referred for an administrative penalty and have been resolved:

1. Failure to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office; and
2. A gross rent violation relating to one unit.

The following compliance violations identified during 2015 were referred for an administrative penalty and are unresolved:

1. Failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts.
2. Failure to provide annual recertification documentation for one unit; and
3. A gross rent violation relating to one unit that is due a rent refund of \$14.

Owner participated in an informal conference with the Enforcement Committee on March 29, 2016, and agreed to sign an Agreed Final Order with the following terms:

1. A \$1,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$500 portion of the administrative penalty on or before May 30, 2016;
3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before June 27, 2016;
4. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$500 will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$1,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
COMMUNITY SERVICES AGENCY
OF SOUTH TEXAS, INC.
WITH RESPECT TO
VILLA DE REPOSO - ENCINAL, TX
(HOME FILE # 530201 / CMTS # 4002)

BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

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§
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AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 **COMMUNITY SERVICES AGENCY OF SOUTH TEXAS, INC.**, a Texas nonprofit corporation ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 2002, Respondent was awarded a HOME loan by the Board totaling \$907,009 to build and operate Villa de Reposo - Encinal, TX ("Property") (HTC file No. 530201 / CMTS No. 4002 / LDLD No. 310).

2. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective March 31, 2003, and filed of record at Volume 433, Page 24 of the Official Public Records of Real Property of LaSalle County, Texas ("Records"), thereafter re-recorded to correct the legal description at Volume 434, Page 150 of the Records; as amended by a First Amendment executed on May 30, 2007, and filed in the Records at Volume 463, Page 423 of the Records; as amended by a Second Amendment effective as of December 5, 2011, and filed in the Records at Document Number 94655 of the Records.
3. Respondent is a Texas nonprofit corporation that is qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. An on-site monitoring review was conducted on April 28, 2015, 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 November 11, 2015, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. An affirmative marketing plan was received in response to an administrative penalty informal conference notice, but the plan did not accurately identify underserved populations, and did not identify organizations that assist persons with disabilities. In addition, only general marketing was being performed. The violation remains unresolved;
 - b. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation was resolved on March 9, 2016, after intervention by the Enforcement committee and 119 days after the deadline;
 - c. Respondent failed to provide an annual recertification for unit 602, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to annually recertify each household. The violation remains unresolved;

¹ 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.

- d. Respondent collected gross rents that exceeded the LOW HOME income limits for 1-bedroom units 600 and 700. TDHCA publishes maximum rent limits annually and owners are responsible for ensuring that the maximum rents that they charge are below that limit. Exceeding the maximum rent is a violation of 10 TEX. ADMIN. CODE §10.622 (Special Rules Regarding Rents and Rent Limit Violations). The violation for unit 700 was dropped after documentation was submitted on February 22, 2016, after intervention by the Enforcement Committee and 103 days after the deadline. The violation for unit 600 remains unresolved and requires a \$14 refund.
5. The following violations remain outstanding at the time of this order:
 - a. Affirmative Marketing Plan violation described in FOF #4a;
 - b. Annual recertification violation for unit 602 described in FOF #4c;
 - c. Gross rent violation for unit 600 described in FOF #4d;

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to TEX. GOV'T CODE §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
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 §10.617 in 2015, by failing to provide a complete affirmative marketing plan and marketing materials.
4. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office.
5. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2015, 10 TEX. ADMIN. CODE §10.612 in 2015, by failing to provide recertification documentation for one unit to ensure continued qualification for the HOME program.
6. Respondent violated 10 TEX. ADMIN. CODE §10.622 in 2015 by charging rents that exceeded income limits for two units and not making timely corrections once the violations were discovered.
7. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
8. 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.

9. 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.
10. An administrative penalty of \$1,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in TEX. GOV'T CODE §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$1,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 30, 2016.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in Attachments 1 and 2, then submit full documentation of the corrections to TDHCA on or before June 27, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at Attachment 3, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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 remaining assessed administrative penalty in the amount of \$500 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 \$500 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (“CMTS”) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS

§
§

COUNTY OF _____ §

BEFORE ME, _____, 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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

COMMUNITY SERVICES AGENCY OF SOUTH TEXAS, INC., a Texas nonprofit corporation

By: _____

Name: _____

Title: _____

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

Attachment 1

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. **Affirmative marketing plan –**

Reasons past submission was unacceptable: Respondent submitted an Affirmative Marketing Plan, however, it did not accurately identify the underserved populations as prescribed at 10 TEX. ADMIN. CODE §10.617(d) and did not identify organizations that assist persons with disabilities. The marketing letters submitted were addressed to Housing Authorities and a medical clinic in Laredo, both of which are considered general marketing because the organizations serve all persons who are living in the participating counties.

Which area to market: Per 10 TEX. ADMIN. CODE §10.617(d)(4), the owner must determine the housing market in which it will conduct marketing outreach efforts. It appears that the owner did not take the development's county into consideration when determining which organizations to send marketing outreach materials. In the event that the development is not located an MSA, such as Villa De Reposo - Encinal, the housing market would be considered the county in which the development is located. In this case, the housing market is LaSalle County. The owner must then determine the population "least likely to apply" by comparing the demographics of the development to the demographics of the housing market. 10 TEX. ADMIN. CODE §10.617(f)(1) allows outreach efforts to be made beyond the county at the owners discretion if the development is located in an area outside of an MSA, however. In order to expand outreach efforts beyond the county, the owner must have selected the nearest MSA area, which appears to be Laredo, Texas, to consider additional census tracts in which marketing outreach efforts could be conducted.

To correct:

- a. Identify the appropriate housing market in which outreach efforts will be made;
- b. Determine the groups that are least likely to apply. The affirmative marketing web tool referenced at 10 TEX. ADMIN. CODE §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Persons with disabilities must always be selected as a group least likely to apply.
- a. Identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials, including organizations that assist persons with disabilities. The organizations must specifically reach those groups designated as least likely to apply. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing. The same is true for the Department Of Human Services, Texas Work Force Solutions, and Texas Neighborhood Service. Local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc,

could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association;

- c. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
 - d. Comply with all requirements of 10 TEX. ADMIN. CODE §10.617, which we recommend using as a checklist;
 - e. Send marketing outreach materials to the identified organizations, and ensure that said marketing materials comply with 10 TEX. ADMIN. CODE §10.617(f)(5). Submit all documentation to the Department for review.
4. Gross rent violation for unit 600 – Corrective action documentation was received and the Department confirmed the household was overcharged rent. However, the household was refunded \$66 resulting from the 2013 monitoring review. It was later determined and evidenced that the owner paid water and sewer utilities, thus resulting in a utility allowance being incorrectly calculated and the household being refunded excess rent. This amount has been taken into consideration, lowering the new amount owed to the Housing Authority of the City of Cotulla.

To correct: This unit receives a Section 8 voucher from the Housing Authority of the City of Cotulla (“HA”) and the household has vacated the unit. Submit the \$14.00 refund to the HA and submit a copy of the cancelled check to the Department.

5. **Tenant income certification and documentation for unit 602** – Corrective action received states the household vacated prior to completing the required annual income recertification documentation and the unit is currently vacant. Determine which circumstance in the table below applies to unit 602, then submit the required corrective documentation as instructed below

Circumstance with respect to unit 602	Instruction
If unit is occupied by a new qualified household	Submit the full tenant file*.
If unit is occupied by a nonqualified household on a month-to-month lease	<p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
If unit is occupied by a nonqualified household with a non-expired lease	<p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>

<p>If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after 6/27/2016 is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.*

Attachment 2

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. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
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. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, correction will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 3

Texas Administrative Code

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

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

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BOARD ACTION REQUEST

LEGAL DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding the adoption of an Agreed Final Order concerning North Oregon Apartments (HTC 91204 / CMTS 1016)

RECOMMENDED ACTION

WHEREAS, North Oregon Apartments (HTC 91204 / CMTS 1016), owned by Albert and Karen Porter (“Owner”), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

WHEREAS, on February 23, 2016, Owner’s representatives participated in an informal conference with the Enforcement Committee, but a decision was tabled because of questions relating to some of the cited findings;

WHEREAS, on March 29, 2016, the Committee reconsidered the property and voted, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,000, with \$500 to be paid within 30 days of signature and the remaining \$1,500 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before July 27, 2016;

WHEREAS, unresolved compliance findings include: a pre-onsite documentation violation; a tenant selection criteria violation; a utility allowance violation; an affirmative marketing plan violation, lease violations relating to required lease notices; and an annual eligibility certification violation; and

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

NOW, therefore, it is hereby

RESOLVED, that an Agreed Final Order assessing an administrative penalty of \$2,000, subject to partial forgiveness as outlined above for noncompliance at North Oregon Apartments (HTC 91204 / CMTS 1016), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

BACKGROUND

Albert and Karen Porter ("Owner") are the owners of North Oregon Apartments (HTC 91204 / CMTS 1016) ("Property"), a low income apartment complex composed of 33 units, located in El Paso County. The property is personally owned and self managed.

The Property is subject to a Land Use Restriction Agreement ("LURA") signed by Owner in 1993 in consideration for an annual housing tax credit allocation in the amount of \$9,180 to rehabilitate and operate the Property.

Owner was previously referred for an administrative penalty for reporting violations, file monitoring violations, and UPCS violations, but referrals were closed informally when full corrections were received. Owner has been referred again, but did not submit corrections. The informal conference highlighted the owner's lack of program knowledge and the need for training.

The following compliance violations identified during 2015 were referred for an administrative penalty and have been resolved:

1. Uniform Physical Condition Standards Violations;
2. Delinquent Quarterly Vacancy Reports due for 2014 and 2015;
3. Pre-on-site documentation violations for failure to submit the Entrance Interview Questionnaire and Unit Status Report;

The following compliance violations identified during 2015 were referred for an administrative penalty and are unresolved:

1. Tenant selection criteria violation;
2. Utility allowance violation;
3. Violation for failure to maintain an Affirmative Marketing Plan and evidence of associated marketing efforts;
4. Lease violations relating to failure to provide and execute required notices, including:
 - a. Failure to post the Tenant Rights and Resources Guide in a common area in the office;
 - b. Failure to execute the Tenant Rights and Resources Guide Acknowledgment for four units;
 - c. Failure to execute the Fair Housing Disclosure Notice for two units.
5. Annual eligibility certification violation relating to one unit.

Owner participated in an informal conference with the Enforcement Committee on February 23, 2016, but a decision was tabled because of questions relating to some of the cited findings, which had the potential to change the maximum penalty calculation and factors considered by the Committee in determining an appropriate administrative penalty amount. On March 29, 2016, the Committee reconsidered the property and voted, subject to Board approval, to recommend an Agreed Final Order with the following terms:

1. A \$2,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit \$500 portion of the administrative penalty on or before May 30, 2016;

3. Owner must correct the file monitoring violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before July 27, 2016;
4. Owner must attend First Thursday Income Eligibility Training and HTC Compliance Training, then provide copies of completion certificates to TDHCA, on or before July 27, 2016.
5. If Owner complies with all requirements and addresses all violations as required, the remaining administrative penalty in the amount of \$1,500 will be forgiven; and
6. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$2,000 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the owner.

ENFORCEMENT ACTION AGAINST
ALBERT AND KAREN PORTER
WITH RESPECT TO
NORTH OREGON
(HTC FILE # 91204 / CMTS # 1016)

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BEFORE THE
TEXAS DEPARTMENT OF
HOUSING AND
COMMUNITY AFFAIRS

AGREED FINAL ORDER

General Remarks and official action taken:

On this 28th day of April, 2016, 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 **ALBERT AND KAREN PORTER**, husband and wife ("Respondent").

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

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

WAIVER

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

FINDINGS OF FACT

Jurisdiction:

1. During 1991, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$9,180 to rehabilitate and operate North Oregon ("Property") (HTC file No. 91204 / CMTS No. 1016 / LDLD No. 157).
2. Respondent signed a land use restriction agreement ("LURA") regarding the Property. The LURA was effective December 28, 1993, and filed of record at Volume 2666, Page 0005 of the Official Public Records of Real Property of El Paso County, Texas ("Records").

3. Respondents are individuals, husband and wife, that are qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations¹:

4. On May 21, 2015 and July 1, 2015, TDHCA sent notice that Respondent had failed to timely submit their 2014 Annual Owner's Compliance Report which had come due on April 30, 2015, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The final parts were submitted on February 19, 2016, after intervention by the Enforcement Committee and 295 days past the deadline.
5. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on July 21, 2015. Inspection reports showed numerous serious property condition violations as shown at **Attachment 1**, a violation of 10 TEX. ADMIN. CODE § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and an October 24, 2015, corrective action deadline was set. Corrective documentation was not received until February 18, 2016, after intervention by the Enforcement Committee and 117 days past the deadline.
6. An on-site monitoring review was conducted on June 23, 2015, 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 November 18, 2015, corrective action deadline was set, however, the following violations were not corrected before the deadline:
 - a. Respondent failed to submit pre-onsite documentation, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements) and §10.618 (Onsite Monitoring), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. The violation was resolved March 26, 2016, after intervention by the Enforcement Committee and 129 days past the deadline;
 - b. Respondent failed to submit Quarterly Vacancy Reports from July 2014 forward, a violation of 10 TEX. ADMIN. CODE §10.607 (Reporting Requirements), which requires all developments to submit quarterly vacancy reports online on the 10th of January, April, July, and October. The missing reports were submitted on January 5, 2016, after intervention by the Enforcement Committee and 48 days past the deadline;

¹ 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.

- c. Respondent failed to maintain written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements. The violation remains unresolved;
- d. Respondent failed to properly calculate the utility allowance for the property, a violation of 10 TEX. ADMIN. CODE §10.614 (Utility Allowances), which requires all developments to establish a utility allowance. Owner indicated during the informal conference that the property is all-bills-paid, but the finding is unresolved;
- e. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing), which requires developments to maintain an affirmative marketing plan and to distribute marketing materials to selected marketing organizations that reach groups identified as least likely to apply and to the disabled. The violation remains unresolved;
- f. Respondent failed to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation remains unresolved;
- g. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for units 5, 10, 22, and 34, a violation of 10 TEX. ADMIN. CODE §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation remains unresolved;
- h. Respondent failed to provide the Fair Housing Disclosure Notice for units 22 and 34, a violation of 10 TEX. ADMIN. CODE § 10.612 (Tenant File Requirements), which, at the time of move-in for the affected households, required all developments to provide prospective households with a fair housing disclosure notice within a certain time period. This form has since been combined with the Notice of Amenities and Services into a replacement document called a "Tenant Rights and Resources Guide." The violation remains unresolved;
- i. Respondent failed to provide an Annual Eligibility Certification for unit 21, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household. The violation remains unresolved;

7. The following violations remain outstanding at the time of this order:

- a. Tenant selection criteria violation described in FOF #6c;
- b. Utility allowance violation described in FOF #6d;
- c. Affirmative Marketing Plan violation described in FOF #6e;
- d. Tenant Rights and Resources Guide violation described in FOF #6f;

- e. Tenant Rights and Resources Guide violation described in FOF #6g;
- f. Fair Housing Disclosure Notice violation for two units described in FOF #6h; and
- g. Annual Eligibility Certification violation for one unit described in FOF #6i.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2015 by failing to submit Annual Owner's Compliance Reports for the year 2014;
5. Respondent violated 10 TEX. ADMIN. CODE § 10.621 in 2015, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.²
6. Respondent violated 10 TEX. ADMIN. CODE §10.607 and §10.618 in 2015, by not submitting pre-onsite documentation including a unit status report and entrance interview questionnaire in preparation for the monitoring review;
7. Respondent violated 10 TEX. ADMIN. CODE §10.607 in 2014 and 2015, by not submitting quarterly vacancy reports as required;
8. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2015, by not maintaining written tenant selection criteria meeting TDHCA requirements;
9. Respondent violated 10 TEX. ADMIN. CODE § 10.614 in 2015 by failing to properly calculate a utility allowance;
10. Respondent violated 10 TEX. ADMIN. CODE §10.617 in 2015, by failing to provide a complete affirmative marketing plan;
11. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2015, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for two units;

² HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TEX. ADMIN. CODE 10.621(a)

12. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by to post a laminated copy of the Tenant Rights and Resources Guide in a common area of the leasing office;
13. Respondent violated 10 TEX. ADMIN. CODE §10.613 in 2015, by failing to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for four units;
14. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2015 by failing to collect an Annual Eligibility Certification for one unit.
15. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
16. 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.
17. 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.
18. An administrative penalty of \$2,000 is an appropriate penalty in accordance with 10 TEX. ADMIN. CODE §2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in TEX. GOV'T CODE §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the 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 \$2,000, subject to deferral as further ordered below.

IT IS FURTHER ORDERED that Respondent shall pay and is hereby directed to pay a \$500 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before May 30, 2016.

IT IS FURTHER ORDERED that all owner representatives who work on tenant files shall attend HTC Compliance Training and 1st Thursday Income Eligibility Training, and submit completion certificates for each to the Agency on or before July 27, 2016.

IT IS FURTHER ORDERED that Respondent shall fully correct the file monitoring violations as indicated in **Attachments 2 and 3**, then submit full documentation of the corrections to TDHCA on or before July 27, 2016.

IT IS FURTHER ORDERED that Respondent shall follow the requirements of 10 Tex. Admin. Code 10.406, a copy of which is included at **Attachment 4**, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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 remaining \$1,500 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 shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

IT IS FURTHER ORDERED that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System ("CMTS") by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at ysella.kaseman@tdhca.state.tx.us to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
TDHCA Attn: Ysella Kaseman 221 E 11 th St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

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

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on _____, 2016.

By: _____
Name: J. Paul Oxer
Title: Chair of the Board of TDHCA

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

THE STATE OF TEXAS §
 §
COUNTY OF _____§

Before me, the undersigned notary public, on this _____ day of _____, 2016, personally appeared J. Paul Oxer, 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 _____, 2016, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____§

BEFORE ME, _____, 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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
- 3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

By: _____
Name: ALBERT PORTER

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF _____

My Commission Expires: _____

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 the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Board of the Texas Department of Housing and Community Affairs."

RESPONDENT:

By: _____

Name: KAREN PORTER

Given under my hand and seal of office this _____ day of _____, 2016.

Signature of Notary Public

Printed Name of Notary Public

Attachment 1

UPCS Violations – corrected 2/18/2016

Inspectable Area	Inspectable Item	Deficiency	5	2	3	Comments
North Oregon Apartments 504 North Oregon Street El Paso, TX 79901						
Building: Bldg 1						
Unit:						
Laundry Room						
	Doors	Damaged Hardware/Locks		L2		laundry door knob missing
Building Systems						
	Fire Protection	Missing Sprinkler Head			L3	eschution missing in electric room and boiler room
Unit: 21	Bathroom	Lavatory Sink - Damaged/Missing		L1		sink stopper missing
	Health & Safety	Infestation - Insects			L3	kitchen, roaches
	Outlets/Switches	Missing/Broken Cover Plates			L3	bathroom gfi cover loose, exposed wires
Unit: 26	Electrical	GFI Inoperable			L3	kitchen gfi will not test
Unit: 33	Bathroom	Lavatory Sink - Damaged/Missing		L1		sink stopper missing

Attachment 2

File Monitoring Violation Resources and Instructions

1. Refer to the following link for all references to the rules at 10 TEX. ADMIN. CODE §10 that are referenced below:

http://texreg.sos.state.tx.us/public/readtacSext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y

2. Refer to the following link for copies of forms that are referenced below:

<http://www.tdhca.state.tx.us/pmcomp/forms.htm>

3. Technical support and training presentations are available at the following links:

Video/Audio Training: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>

CMTS User Guide: <http://www.tdhca.state.tx.us/pmcdocs/03-CMTSUserGuide-030122.pdf>

Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>

Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>

4. **Written tenant selection criteria** – Submit written tenant selection criteria addressing all requirements at 10 TEX. ADMIN. CODE §10.610, including but not limited to the requirement to state that the Development will comply with state or federal fair housing and anti-discrimination laws. TDHCA staff recommend using the rule as a checklist.
5. **Utility allowance** – Owner indicated during the informal conference that the property is all-bills paid. Submit evidence that owner pays for all utilities at this development.
6. **Affirmative marketing plan** –
 - a. Determine the groups that are least likely to apply. The affirmative marketing web tool referenced at 10 TEX. ADMIN. CODE §10.617(d)(5) to determine groups that are least likely to apply is available online at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>. Persons with disabilities must always be selected as a group least likely to apply. *(Note that you will have to follow alternate census tract instructions in the web tool since North Oregon has under 40 units)*
 - a. ~~Identify specific organizations, media, and community contacts in the housing market to send marketing outreach materials, including organizations that assist persons with disabilities. The organizations must specifically reach those groups designated as least likely to apply. For example, a local housing authority serves the general public, not a specific racial or ethnic demographic; therefore, marketing to the housing authority is not affirmative marketing. The same is true for the Department Of Human Services, Texas Work Force Solutions, and Texas Neighborhood Service. A Hispanic Chamber of Commerce or Hispanic publication could be an avenue to market to the Hispanic population if that group is identified as one that is least likely to apply. Similarly, local groups that focus on helping the mentally disabled, physically disabled, disabled veteran affairs groups, etc, could be a way to market to the disabled community. Some examples of groups that focus on the disabled: Easter Seals, United Cerebral Palsy, American Council of the Blind, The Blinded Veterans Association.~~

- b. Complete and execute an affirmative marketing plan using any version of HUD Form 935.2A, including the groups and organizations identified above;
 - c. Comply with all requirements of 10 TEX. ADMIN. CODE §10.617, which TDHCA staff recommend using as a checklist;
 - d. Send marketing outreach materials to the identified organizations, and ensure that said marketing materials comply with 10 TEX. ADMIN. CODE §10.617(f)(5). Submit all documentation to the Department for review.
7. **Lease requirements relating to the Fair Housing Disclosure Notice (FHDN) and Tenant Rights and Resources Guide** – The FHDN has since been replaced by the Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k). To correct:
- a. Implement Tenants Rights and Resource Guide as indicated at 10 TEX. ADMIN. CODE §10.613(k).
 - b. Submit letter certifying that a laminated copy of the Tenants Rights and Resource Guide has been posted in a common area of the leasing office.
 - c. Submit a copy of the Tenants Rights and Resource Guide customized for the property.
 - d. The most recent Quarterly Vacancy Report submitted for the property indicates that the affected households in units 5, 10, 22, and 34 remain in the units. If that is the case, submit signed Tenants Rights and Resource Guide Acknowledgments for units 5, 10, 22, and 34. If the affected households have moved out without signing this form, please submit a letter to TDHCA including the move-out date and acknowledging that the finding cannot be resolved.
8. **Tenant income certification and documentation for unit 11** – Owners must annually (by the anniversary date of move in) collect and maintain current data on each household. The household occupying the unit at the time of the review moved in on 9/8/2012. An Annual Eligibility Certification form executed by the household on 10/16/2013 was found in the file. Current household data was not found.

To correct: Submit an Annual Eligibility Certification form executed by the household. Do not have the household backdate the form. The effective date will be the date the household executes the form. Going forward, current data on the household must be collected by September 8th of each year, but no greater than 120 days prior the September 8th.

Alternatively, if the affected household has moved out, follow the instructions in this chart:

Circumstance with respect to units listed above	Instruction
If unit is occupied by a new qualified household	Submit the full tenant file*.

<p>If unit is occupied by a nonqualified household on a month-to-month lease</p>	<p>A. Follow your normal procedures for terminating residency and provide a copy of documentation to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after ■ is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>If unit is occupied by a nonqualified household with a non-expired lease</p>	<p>A. Issue a nonrenewal notice to tenant and provide a copy to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after ■ is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after ■ is acceptable for this circumstance provided that Requirement A above is fulfilled.</p>
<p>If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be submitted to TDHCA.</p> <p>B. If unit is not ready for occupancy, submit a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. As soon as the unit is occupied by a qualified household, you must submit the full tenant file*. Receipt after ■ is acceptable for this circumstance provided that Requirements A and B above are fulfilled.</p>

**Full tenant file must include: tenant application, verifications of all sources of income and assets, tenant income certification, lease, lease addendum, and Tenant Rights and Resources Guide Acknowledgment.*

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. **3rd party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.
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. **Tenant Rights and Resources Guide:** As of 1/8/2015, the Fair Housing Disclosure Notice and Tenant Amenities and Services Notice have been replaced by the Tenant Rights and Resources Guide, a copy of which is available online at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureBooklet.doc>.

In accordance with 10 TAC §10.613(k), a laminated copy of this guide must be posted in a common area of the leasing office. Development must also provide a copy of the guide to each household during the application process and upon any subsequent changes to the items described at paragraph b) below. The Tenant Rights and Resources Guide includes:

- a) Information about Fair Housing and tenant choice; and
- b) Information regarding common amenities, unit amenities, and services.

A representative of the household must receive a copy of the Tenant Rights and Resources Guide and sign an acknowledgment of receipt of the brochure prior to, but no more than 120 days prior to, the initial lease execution date.

In the event that there is a prior finding for a Fair Housing Disclosure Notice, Tenant Amenities and Services Notice, the Tenant Rights and Resources Guide was not provided timely, or the household does not certify to receipt of the Tenant Rights and Resources Guide, correction will be achieved by providing the household with the Tenant Rights and Resources Guide and receiving a signed acknowledgment. A copy of the acknowledgment form is available at: <http://www.tdhca.state.tx.us/pmcdocs/FairHousingDisclosureSignaturePage.pdf>.

Attachment 4:

Texas Administrative Code

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

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make a recommendation to the Board for the debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, a Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and

Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

(f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

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

(2) a list of the names of transferees and Related Parties;

(3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;

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

(g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.

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

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

(2) in cases where the general partner is being replaced if the award of credits was made at least five (5) years prior to the transfer request date.

(i) Penalties. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department.

(j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

Source Note: The provisions of this §10.406 adopted to be effective December 9, 2014, 39 TexReg 9518

1h

BOARD ACTION REQUEST

ASSET MANAGEMENT

APRIL 28, 2016

Presentation, Discussion, and Possible Action to approve a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for La Herencia Apartments (# 97047)

RECOMMENDED ACTION

WHEREAS, La Herencia Apartments received an award of 9% Housing Tax Credits in 1997 to construct 160 multifamily units in Mercedes;

WHEREAS, the LURA for the Development requires a one-year Right of First Refusal (“ROFR”) whereby during this period a qualified nonprofit organization, within the meaning of §42(h)(5)(C) of the Internal Revenue Code, or tenant organization may make a bona fide offer to purchase the property;

WHEREAS, in Spring 2015 the Texas Legislature amended Tex Gov’t Code §2306.6725 to allow for a 180-day ROFR period;

WHEREAS, §2306.6726 was also amended to permit a Qualified Entity to purchase a property under ROFR and defines a Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, the General Partner, acting on behalf of the Partnership, requests to amend the LURA to replace the one-year ROFR period with the 180-day ROFR period as allowed by amended §2306.6725, and also seeks to amend the LURA to incorporate language from the last legislative session; and

WHEREAS, 10 TAC §10.405(b)(2)(F) and (G) requires Board approval for amendments to the LURA considered material, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for La Herencia Apartments 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

La Herencia Apartments was approved in 1997 for the construction of 160 multifamily units in Mercedes. In a letter dated March 22, 2016, La Herencia Apartments I, LLC, the General Partner, has requested approval to amend the LURA related to the ROFR provision. The LURA for the Development requires a

one year ROFR period and allows the purchase of the property during this one year period by a qualified nonprofit organization (as defined in §42(h)(5)(C) of the Internal Revenue Code) or a tenant organization. The General Partner requests that this provision be amended to replace the one-year period with the 180-day period consistent with amended §2306.6725, as well as amend the language to incorporate allow the purchaser to be a qualified entity as defined in Tex Gov't Code 2306.6726.

In 2015, the Texas Legislature passed HB 3576 which amended Tex Gov't Code §2306.6725 to allow for a 180-day ROFR period and §2306.6726 to allow for a qualified entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, HB 3576 defines qualified entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. With this new definition, a housing authority would be a qualified entity and it is the Development Owner's ultimate desire to convey this property to the Housing Authority of the County of Hidalgo subsequent to the Department's approval of this requested amendment and approval of an ownership transfer for said conveyance. While the Department's 2016 Post Award and Asset Management Requirements implemented administrative procedures under §10.405(b)(2)(F) to allow a Development Owner to conform to a ROFR period described in amended §2306.6725, that section of the rule is specific only to amending the ROFR period. However, the change requested is deemed material by the Executive Director under §10.405(b)(2)(G) and requires Board approval.

The Development Owner must comply with the amendment and notification requirements under the Department's rule at Tex Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner has notified the tenants, lenders, investors and State and local public officials of this amendment request. Additionally, the Development Owner will hold a public hearing on April 15, 2016.

Staff recommends approval of the amendment, subject to no negative public comment received, to amend the LURA for La Herencia Apartments to incorporate language from the last legislative session.

April 8, 2016

Tim Irvine
Executive Director
Texas Department of Housing
and Community Affairs
221 E. 11th Street
Austin, TX 78711

Re: La Herencia Apartments, Mercedes, Texas; LURA Amendment Request;
TDHCA # 97047

Dear Mr. Irvine:

The undersigned is authorized by La Herencia Apartments I, LLC (“General Partner”), on behalf of La Herencia Apartments, L.P. (“Partnership”) to write you to revise its previous request of March 17, 2016, concerning the Land Use Restriction Agreement (“LURA”) filed of record pertaining to that certain multifamily housing project in Hidalgo County, Texas, commonly known as La Herencia Apartments (the “Property”), a copy of which I have enclosed with this letter. Previously, General Partner requested the LURA be amended to provide for it to be consistent with revisions to Texas Government Code (the “Government Code”) Section 2306.6726(c)(3), which defines a “Qualified entity” to mean an entity described by Section 42(i)(7)(A) of the Internal Revenue Code of 1986, as amended (the “Qualified Entity Amendment”). General Partner would like to expand its previous request to include, in addition the Qualified Entity Amendment, the additional request that the LURA be amended to change the Right of First Refusal period as described in Government Code Section 2306.6725 (the “ROFR Period Amendment”).

As discussed in our initial request, it is the ultimate desire of Partnership to convey the Property to the Housing Authority of the County of Hidalgo and the Edinburg Housing Authority (collectively, the “HAHC”) subsequent to approval of this request by the Texas Department of Housing and Community Affairs (“TDHCA”). As you know, when the Property was allocated tax credits and TDHCA recorded the LURA against the Property, the LURA currently contains a one-year period for offering the Property for sale in certain circumstances following the owner’s decision to sell. As you further know, last year the Texas Legislature enacted HB3576, which, among other things, amended Section 2306.6725 of the Government Code to allow a LURA to be amended to require a ROFR posting period of 180 days. The basis for this request was unquestionably unforeseeable at the time the LURA was filed. The business reason for the request is because HAHC has already expressed interest to acquire the Property and both Partnership and HCHA desire to close as soon as possible.

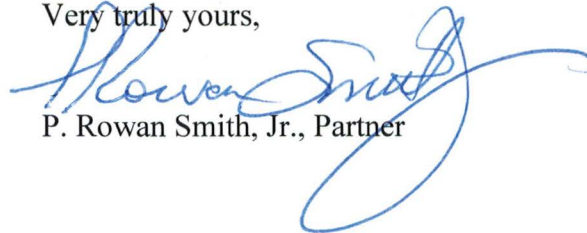
Tim Irvine
April 8, 2016
Page 2

A public hearing to discuss the Qualified Entity Amendment has been scheduled for Friday, April 15, 2016, and the appropriate parties have already been notified of this hearing. Partnership intends to hold this public hearing as planned. It is the intent to hold a separate public hearing on to discuss the ROFR Period Amendment on Thursday, April 21, 2016, which is seven days prior to the April 28, 2016, scheduled meeting of the Board of TDHCA.

Please process this request at your earliest convenience and please advise me if there is any further documentation, information or materials you deem reasonably necessary to process this request.

I appreciate your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "P. Rowan Smith, Jr.", with a large, stylized flourish extending from the end of the signature.

P. Rowan Smith, Jr., Partner

cc: Mike Pruitt
Bill Encinas
Angela Heyward
Paul Park, Esq.
Richard A. Cantu, Esq.
Dora Moreno
Tim Smith
Sarah Salcedo
Jorge Rivas
Paul Cowen
Mike Lopez
Lauren G. Osterman, Esq.
John C. Shackelford, Esq.

TDHCA #: 97047**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 December 9, 1998, is made by and between La Herencia Apartments, Limited Partnership (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(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 Project Owner is or shall be the Project Owner of a low income rental housing development, known as or to be known as La Herencia Apartments, L.P. (the "Project Improvements"), on real property located in the City of Mercedes, County of Hidalgo, 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");

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 \$ 926,131 Tax Credit dollars annually;

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 annual allocation of Tax Credits in the amount of \$ 861,263;

WHEREAS, the Project Owner has represented to the Department in the Application that it will impose additional rent and occupancy restrictions as shown in Appendix A of this document (Check box if applicable) ;

WHEREAS, the Project Owner is subject to the regulatory 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 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, intends, 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:

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, Chap. 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" 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(i) hereof.

"Board" means the governing Board of the Department.

"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 elected at 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 at 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 allowance 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 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" 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(i)(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.

"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 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 Project Owner shall cause this Declaration and all amendments hereto 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 date, 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 intends, 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 alternate, 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 (each an "Existing Lienholder") on the Project 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 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:

(a) The Project 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 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 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 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 constitutes or will constitute, 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 will 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.

(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 assume, 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) and financial reports, as applicable, of the prospective successor owner and operator of the Project or building, so the Department can determine the economic viability of such prospective successor and such Project or building and whether such prospective successor is acceptable as Project Owner under the Department Rules. The Project 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 Project Owner, and to provide to the Department the name(s) and 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 Project Owner under the Department Rules.

(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 supersede any other requirements in conflict herewith.

(n) The Project Owner agrees, warrants, and covenants to comply with all law, ordinances, statutes, codes, orders, rules, regulations and decrees of any Governmental Authority applicable to the Owner of the Project, 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.

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) 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 160 Units, of which at least 160 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.

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), upon the recorded declaration 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; 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 present 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.

(d) If any party acquiring a building by foreclosure (or instrument in lieu of foreclosure) fails to record a declaration terminating this Declaration pursuant to subsection (b)(1) above, 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.

SECTION 6 - ENFORCEMENT, ADMINISTRATION AND COMPLIANCE

(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.

(e) The Project Owner agrees that the Department may enforce all state and federal law through this Declaration, and utilize for such purpose 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 Project Owner agrees the Department may, at reasonable times and upon adequate notice at any time during the construction, rehabilitation, or operation of the Project, enter and inspect the Project to evaluate its physical and financial condition, construction, rehabilitation, operation, management and maintenance.

(g) The Project Owner agrees the Department may, at reasonable times and upon adequate notice, examine all books and records, and request and receive from the Project Owner one or more reports, relating to the ownership, operations, capitalization, reserve funds, income, expenses and other financial and regulatory matters of the Project or the Project Owner.

(h) The Project Owner agrees that the Department may at any time order it and/or its managing agent or Project manager to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, Department rule, or term of an agreement regarding the Project, and that the Department may file and prosecute a complaint against a managing agent, Project manager, or the Project Owner for a violation of any applicable law or ordinance.

(i) Upon a determination by the Department that the Project Owner has failed to maintain the Project in good and habitable condition and suitable for occupancy as hereinabove required, the Project Owner agrees, upon the Department's direction, to establish a reserve for replacement and repairs to the Project in such initial amount and with such monthly deposits as the Department may direct. Such reserve shall be held for the benefit of the Project Owner and the Project by such party as the Department shall direct, and disbursements shall be made therefrom only upon direction of or approval by the Department.

(j) The Project 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 by the Project Owner, including claims by third parties.

(k) The Project 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, Project Owner will cooperate fully with the Department in the defense or other disposition thereof.

(l) The Project Owner agrees to furnish the Department with copies of all correspondence between the Project Owner and the Service with respect to the Project, other than tax returns and routine, periodic reports filed with the Service.

SECTION 7 - FEES

(a) To compensate the Department for its responsibilities pursuant to the Act and 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 shown below. This fee shall be based on the total number of Low-Income Units in the development. In no event shall the fee be less than \$100.

(1) For projects with Commitment Notices issued prior to 1998 the fee will be \$15 per Unit.

(2) For projects with Commitment Notices issued in 1998 or later the fee will be \$25 per unit.

(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 (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 Project 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 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 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, that 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.

(e) The Project Owner agrees that it will pay the annual administrative fee at the times required by the Department therefor 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
507 Sabine, Suite 400
Austin, Texas 78701
Attn: Low Income Housing Tax Credit Program

To the Project Owner: La Herencia Apartments, L.P.
16420 Park Ten Place, Suite 220
Houston, Texas 77084
Attention: P. Rowan Smith, Jr.

The Department, and the Project 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 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(c) hereof and in the Consent and Subordination of Existing Lienholder, 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.

(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 elected 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:

La Herencia Apartments, L.P.

By: P. Rowan Smith, Jr.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: Daisy Stiner

STATE OF Texas

COUNTY OF Harris

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 9th day of December, 1998,

by P. Rowan Smith, Jr.
Name

G.P. Manager
Title

of La Herencia Apartments, L.P.
Project Owner Name

a Limited Partnership
Type of Partnership

on behalf of said Limited Partnership
Type of Partnership

This instrument was acknowledged before me on the 16th day of DECEMBER, 1998,

by DAISY STINER

ACTING EXEC. DIRECTOR
Title

of the Texas Department of Housing and Community Affairs, a public and official department of the State of Texas, on behalf of said department.

Kim Hatfield
Notary Public

Delores Ann Groneck
Notary Public, State of Texas

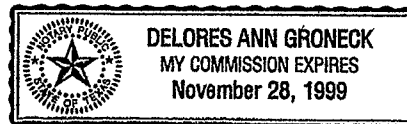
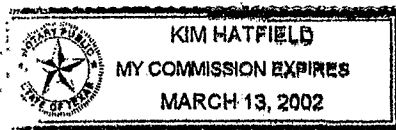


EXHIBIT A

October 22, 1997

METES AND BOUNDS DESCRIPTION 37.26 ACRES OF LAND OUT OF LOTS 7, 9 AND 10, BLOCK 114, CAMPACUAS ADDITION HIDALGO COUNTY, TEXAS

A tract of land containing 37.26 acres situated in the County of Hidalgo, Texas, being 17.33 acres out of LOT 7, 4.23 acres out of LOT 9, and 15.70 acres out of LOT 10, BLOCK 114, CAMPACUAS ADDITION TO THE CAPISALLO DISTRICT, according to the plat thereof recorded in Volume 1, Page 2, Hidalgo County Map Records, which said Lot 7 was conveyed to the LOUIS L. FRERKING FAMILY TRUST by virtue of a Warranty Deed recorded under Document #522201, Hidalgo County Official Records and said 4.23 ac. and 15.70 ac. tracts were conveyed to the LOUIS L. FRERKING FAMILY TRUST by virtue of a Warranty Deed recorded under Document #522202, Hidalgo County Official Records, said 37.26 acres also being more particularly described as follows:

BEGINNING at an iron rod set on the west line of said Lot 7 for the westernmost northwest corner of this tract, said iron rod bears S 00° 32' 57" W a distance of 808.50 feet from the northwest corner of said Lot 7, Block 114;

THENCE, EAST a distance of 364.60 feet to an iron rod set for an outside corner of this tract;

THENCE, S 17° 11' 53" E a distance of 119.84 feet to an iron rod set for an outside corner of this tract;

THENCE, SOUTH a distance of 130.00 feet to an iron rod set for an inside corner of this tract;

THENCE, EAST a distance of 302.00 feet to an iron rod set for an inside corner of this tract;

THENCE, N 00° 34' 59" E along the approximate west edge of an existing lake, at a distance of 1029.27 feet pass the approximate northwest corner of the edge of said lake, and continuing for a total distance of 1053.00 feet to an iron rod set on the north line of said Lot 7 for the northernmost northwest corner of this tract;

THENCE, EAST along the north line of said Lot 7, a distance of 350.06 feet to the northeast corner of said Lot 7 for the northeast corner of this tract;

THENCE, SOUTH along the east line of said Lot 7, a distance of 1320.00 feet to the southeast corner of said Lot 7, the northwest corner of said Lot 9 and the northeast corner of said Lot 10, for an inside corner of this tract;

THENCE, S 42° 04' 00" E a distance of 860.36 feet to the southeast corner of this tract;

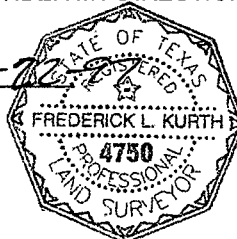
THENCE, WEST at a distance of 576.44 feet pass the west line of said Lot 9 and the east line of said Lot 10, and continuing a total distance of 1650.27 feet to an iron rod set on the west line of said Lot 10 for the southwest corner of this tract;

THENCE, N 00° 32' 57" E along the west lines of said Lots 10 and 7 and the east right-of-way line of Mile 2½ West Road, at a distance of 638.73 feet pass an iron rod set for the northwest corner of said Lot 10 and the southwest corner of said Lot 7, and continuing a total distance of 1150.29 feet to the POINT OF BEGINNING, and containing 37.26 acres of land, more or less.

I, FRED L. KURTH, REGISTERED PROFESSIONAL LAND SURVEYOR DO HEREBY AFFIRM THAT THIS METES AND BOUNDS DESCRIPTION REPRESENTS THE RESULTS OF A SURVEY MADE ON THE GROUND ON 10/15/97 UNDER MY DIRECTION AND SUPERVISION.

Fred L. Kurth
FRED L. KURTH, R.P.L.S.#4750

DATE: 10-22-97



f:\survey\197009\24

ADDENDUM A TO DECLARATION - CONSENT AND SUBORDINATION OF LIENHOLDER

[To be executed by each lienholder on the project as of the effective date of the declaration.]

The undersigned lienholder ("Lienholder") hereby consents to the execution by Project Owner of the foregoing Declaration for La Herencia Apartments (the "Project Improvements").

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)(1) of the Declaration, the Declaration will terminate on the date the Project is acquired by foreclosure or deed in lieu of foreclosure, upon the recorded declaration of the party so acquiring the building (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 3rd day of December, 1998

LIENHOLDER: PNC Bank, N.A.

By: *Edward C. Denny, Jr.*
Name: Edward C. Denny, Jr.
Title: Vice President

STATE OF Kentucky
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Edward C. Denny, Jr., 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 3rd day of December, 1998

Cathy D. J. [Signature]

Notary Public Notary Public, State of Kentucky, at Large
My Commission expires: My commission expires August 11, 2002

APPENDIX A - ADDITIONAL USE RESTRICTIONS
(Check all restrictions which were elected at the time of Application.)

Additional Rent and Occupancy Restrictions

At least 48 Units in the Project must be occupied by Tenants at or below 50% of Area Median Gross Income. The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMGI level.

Longer Compliance Period and Extended Use Period

The Compliance Period shall be a period of 25 consecutive taxable years and the Extended Use Period shall be a period of 40 consecutive taxable years, each commencing with the first year of the Credit Period.

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. The qualified nonprofit organization which shall own such interest and shall so materially participate in the development and operation of the Project is _____.

The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified nonprofit organization.

Historically Underutilized Businesses (HUB)

Throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall remain the Managing General Partner. The HUB must also maintain regular, continuous, and substantial participation in the development, operation and ownership of the project.

Supportive Services

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Computer training, counseling, job placement services and a day care center provided by Hidalgo County Head Start

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 Mercedes and Hidalgo County.

APPENDIX A - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL

(Only Projects which made a Right of First Refusal election should include this page as part of the LURA.)

Right of First Refusal to Tenant or Qualified Nonprofit Organizations for 1997 allocations

The Project Owner has entered into an Agreement for Provision of the Right of First Refusal with the Department. If at any time after the fifteenth year of the Compliance Period, the Project Owner shall determine to sell the Project, this agreement shall serve as evidence that the sponsor agrees to provide, and provides, to a qualified nonprofit organization (as defined in §42 (h) (5) (C) of the code) or a tenant organization, a right of first refusal to purchase the Project for the minimum purchase price provided in, and in accordance with the requirements of §42 (i) (7) (B) of the Code as shown below.

“(B) Minimum purchase price. The minimum purchase price under this subparagraph is an amount equal to the sum of-

- (i) the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and
- (ii) all Federal, State, and local taxes attributable to such sale.

Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).”

Sponsor will provide this right of first refusal in either of the following ways:

(Check Only One)

- (i) by entering into an agreement with a specific qualified nonprofit organization (or tenant organization) providing for such right of first refusal. The qualified nonprofit organization will be Bozrah International Ministries, Inc.. *In the event that this organization is not operating when the right of first refusal is to be made, the right of first refusal must be provided to another qualified nonprofit organization.*
- (ii) by entering into an agreement with the Department providing that upon the earlier of:
 - (I) the Sponsor's determination to sell the Project, or
 - (II) the Sponsor's request to the Department, pursuant to §42 (h) (6) (I)² of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of §42 (h) (6) (F) of the Code, the Department shall be authorized to identify a qualified nonprofit organization (or tenant organization) to which the Sponsor shall sell the Project at the minimum purchase price provided in §42 (i) (7) (B) of the Code (as fully described above).

² “(I) Period for finding buyer. The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.”

APPENDIX A - MINIMUM APPLICABLE FRACTION BY BUILDING

Building Number	Building Identification Number (BIN)	Minimum Applicable Fraction
1.	TX- 97-00199	100
2.	TX- 97-00200	100
3.	TX- 97-00201	100
4.	TX- 97-00202	100
5.	TX- 97-00203	100
6.	TX- 97-00204	100
7.	TX- 97-00205	100
8.	TX- 97-00206	100
9.	TX- 97-00207	100
10.	TX- 97-00208	100
11.	TX- 97-00209	100
12.	TX- 97-00210	100
13.	TX- 97-00211	100
14.	TX- 97-00212	100
15.	TX- 97-00213	100
16.	TX- 97-00214	100
17.	TX- 97-00215	100
18.	TX- 97-00216	100
19.	TX- 97-00217	100
20.	TX- 97-00218	100
21.	TX- 97-00219	100
22.	TX- 97-00220	100
23.	TX- 97-00221	100
24.	TX- 97-00222	100
25.	TX- 97-00223	100
26.	TX- 97-00224	100
27.	TX- 97-00225	100
28.	TX- 97-00226	100
29.	TX- 97-00227	100
30.	TX- 97-00228	100
31.	TX- 97-00229	100
32.	TX- 97-00230	100
33.	TX- 97-00231	100
34.	TX- 97-00232	100
35.	TX- 97-00233	100
36.	TX- 97-00234	100
37.	TX- 97-00235	100
38.	TX- 97-00236	100
39.	TX 97-00237	100
40.	TX 97-00238	100

Filed for Record in:
Hidalgo County, Texas
by Jose Eloy Pulido
County Clerk

On: Dec 29, 1998 at 08:40A

As a
Recording

Document Number: 735216
Total Fees 37.00

Receipt Number - 191262
By,
MaryLou Cantu

1i

BOARD ACTION REQUEST

ASSET MANAGEMENT

APRIL 28, 2016

Presentation, Discussion, and Possible Action to approve the transfer of the HUB Managing General Partnership interest to a non-HUB general partner and a material amendment to the Housing Tax Credit Land Use Restriction Agreement (“LURA”) for Hollow Creek Apartments (File No. 96026)

RECOMMENDED ACTION

WHEREAS, Hollow Creek Apartments (the “Property”) received an award of 9% Housing Tax Credits in 1996 to construct 120 new multifamily units in Conroe;

WHEREAS, the tax credit application for the Development received points and/or other preferences for having a Historically Underutilized Business (“HUB”), namely H. R. Real Estate Company of Texas, Inc. (“the current HUB”), participate in the ownership of the Development;

WHEREAS, the LURA for the Development requires that throughout the Compliance Period, unless otherwise permitted by the Department, the HUB shall remain the Managing General Partner and must maintain regular, continuous, and substantial participation in the development and operation of the Project;

WHEREAS, the Development is within the Compliance Period, as defined and required in the LURA;

WHEREAS, the Development Owner, including the HUB General Partner, have entered into a purchase and sale agreement to sell the property to a new entity;

WHEREAS, the Development Owner requests approval to amend the LURA for the Development to eliminate the HUB requirement; and

WHEREAS, 10 TAC §10.406(g) allows for a HUB general partner to sell its interest to a non-HUB general partner as long as the LURA does not require such continual ownership or a material LURA amendment is approved, and the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the ownership transfer and material LURA amendment for Hollow Creek Apartments 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

Hollow Creek Apartments was approved in 1996 for the new construction of 120 multifamily units in Conroe (Montgomery County). On April 5, 2016, the current HUB acting on behalf of Hickerson Street Apartments, L.P., (the “Partnership”), through their attorney requested approval for the elimination of the requirement for a HUB to hold an ownership interest in the Project and the requirement for the HUB to maintain regular, continuous, and substantial participation in the development and operation of the Project.

The current ownership interest of the Partnership includes a 1% HUB Managing General Partnership interest held by H. R. Real Estate Company of Texas, Inc. The property is currently under contract to be purchased by On Track Ministries, Inc. Upon approval of the transfer by the Department and prior to closing, On Track Ministries, Inc. will assign the purchase contract to the proposed owner, Hollow Creek Harmony Housing LP. The new General Partner with a 0.01% ownership interest will be Hollow Creek Harmony Housing GP LLC whose sole member will be Foundation for Affordable Rental Housing Holdings Inc., a non-profit corporation. Bainbridge Properties, L.L.C., will be the Limited Partner, with a 99.99% ownership interest in the Partnership. Because the proposed new owner and general partner is a non-HUB, the request for a material LURA amendment to remove the HUB requirement was submitted simultaneous with the ownership transfer request.

The current HUB has provided a statement confirming that their decision to exit the ownership is of its own volition and that its participation has been and will continue to be substantive and meaningful until the sale of the Property.

Pursuant to 10 TAC §10.405(b)(4), the Owner notified the tenants, lenders, investors and State and local public officials. Additionally, a public hearing is scheduled for April 15, 2016.

The owner has complied with the ownership transfer, amendment and notification requirements under the Department’s rule at Texas Government Code §2306.6712, 10 TAC §10.405(b) and 10 TAC §10.406(g).

Staff recommends approval of the transfer of the HUB Managing General Partnership interest to the proposed non-HUB general partner and amendment to the LURA to eliminate the requirement for participation of a HUB in the ownership structure and operation of the Development, subject to no negative public comment received.

Hickerson Street Apartments, L.P.
500 Hickerson Street
Conroe, Texas 77031

April 5, 2016

VIA HAND DELIVERY

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

Re: Hollow Creek Apartments (the "**Property**")
TDHCA File No. 96026

Dear Lucy:

The undersigned, is the General Partner (herein so called) and HUB (hereinafter defined) of Hickerson Street Apartments, L.P., a Texas limited partnership and the current owner of the Property (the "**Owner**"). This letter constitutes notice of an ownership transfer in accordance with Section 10.406(f) of the Uniform Multifamily Rules (the "**Rules**") and a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules. Specifically, the LURA for this Property requires ownership participation by an historically underutilized business (a "**HUB**"). The General Partner, acting on behalf of the Owner, requests elimination of that requirement for the reasons set forth below.

Background Information

The Owner is currently structured to include the General Partner, EC, Inc. (the "**Investor Limited Partner**"), and ZJL Housing, Inc. (the "**Special Limited Partner**" and collectively with Investor Limited Partner, the "**Limited Partners**"). The General Partner, acting on behalf of the Owner, has determined it is in its best economic interest to sell the Property and has entered into a purchase contract (the "**Contract**") with On Track Ministries, Inc., a Texas non-profit corporation ("**OTM**"). OTM subsequently assigned the Contract on March 9, 2016 to Hollow Creek Harmony Housing LP, a Georgia limited partnership qualified in Texas as Harmony Housing Conroe Property LP (the "**Proposed Owner**").

Request

Based upon Section 10.406(f) of the Rules, the General Partner, acting on behalf of the Owner, requests that TDHCA remove the HUB requirement from its LURA thereby allowing the Proposed Owner to take ownership control of the Property while maintaining compliance with the LURA. In accordance with the Rules:

- (1) The General Partner acting on behalf of the Owner, acted in concert with the Limited Partners in choosing to sell the Property to Proposed Owner. The HUB was not removed from its position as evidenced in the executed statement of the HUB attached as **Exhibit A**.
- (2) The General Partner's participation as the HUB with regard to the Property is substantive and meaningful, and will continue to be so until the sale of the Property.


LURA Amendment

In accordance with Section 10.405(b) of the Rules, the General Partner, acting on behalf of the Owner, is delivering a fee in the amount of \$2500. In addition, the General Partner, acting on behalf of the Owner, commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the General Partner, acting on behalf of the Owner, will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the General Partner, acting on behalf of the Owner, requests staff recommendation, in support of this request, to be considered at the April 28, 2016 TDHCA Board meeting.

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

Sincerely,

H.R. Real Estate Co. of Texas, Inc.,
a Texas corporation,
its general partner

By: 
Name: Robert Reed
Title: President

Attachments

cc: Raquel Morales
TDHCA w/ encl.

Cynthia L. Bast
Owner Counsel w/encl.

Hickerson Street Apartments, L.P.
500 Hickerson Street
Conroe, Texas 77031

April ____, 2016

Dear Resident:

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

The Owner is currently structured to include H.R. Real Estate Co. of Texas, Inc. (the "**H.R. Real Estate**") as the general partner. H.R. Real Estate is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner has decided to sell the Property prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing requirement for HUB participation from its contract.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on Tuesday, April 19, 2016 at ____ a.m./p.m.

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

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

Thank you for choosing Hollow Creek Apartments as your home.

Sincerely,

HICKERSON STREET APARTMENTS, L.P.,
a Texas limited Partnership

By: H.R. Real Estate Co. of Texas, Inc.,
a Texas corporation,
its general partner

By: _____
Name: _____
Title: _____

Hollow Creek Apartments
500 Hickerson Street
Conroe, Texas 77031

[Elected Official]

April ____, 2016

Dear [Addressee]:

Hickerson Street Apartments, L.P. (the "**Owner**") is the owner of Hollow Creek Apartments (the "**Community**") which is located at 500 Hickerson Street, Conroe, Texas 77031. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

The Owner is currently structured to include H.R. Real Estate Co. of Texas, Inc. (the "**H.R. Real Estate**") as the general partner. H.R. Real Estate is certified by the State of Texas as a Historically Underutilized Business (a "**HUB**"). A contractual restriction imposed by TDHCA mandated that a HUB participate in the ownership of the Community for a designated period of time. The Owner has decided to sell the Property prior to the expiration of this mandatory period. Therefore, Owner is requesting TDHCA approval to remove the ongoing requirement for HUB participation from its contract.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on Tuesday, April 19th, 2016 at ____ a.m./p.m.

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

Sincerely,

HICKERSON STREET APARTMENTS, L.P.,
a Texas limited Partnership

By: H.R. Real Estate Co. of Texas, Inc.,
a Texas corporation,
its general partner

By: _____
Name: _____
Title: _____

Hollow Creek Apartments
500 Hickerson Street
Conroe, Texas 77031

April ____, 2016

[Investor/Lender]

Dear [Addressee]:

Hickerson Street Apartments, L.P. (the "**Owner**") is the owner of Hollow Creek Apartments (the "**Community**") which is located at 500 Hickerson Street, Conroe, Texas 77031. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

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Sincerely,

HICKERSON STREET APARTMENTS, L.P.,
a Texas limited Partnership

By: H.R. Real Estate Co. of Texas, Inc.,
a Texas corporation,
its general partner

By: _____
Name: _____
Title: _____

H.R. Real Estate Co. of Texas, Inc.
2121 Kirby Drive, Unit 68
Houston, Texas 77019-6066

April 5, 2016

Mr. Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-241

RE: Hollow Creek Apartments (the "**Property**")
TDHCA No. 96026

Dear Ms. Trevino


The undersigned is the General Partner and HUB ("**H.R. Real Estate**") of Hickerson Street Apartments, L.P., a Texas limited partnership (the "**Owner**"). The Owner is the current owner of Hollow Creek Apartments.

EC, Inc., a Texas corporation ("**ECI**") is the Investor Limited Partner and the Special Limited Partner is ZJL Housing, Inc. ("**ZJL**", and collectively with ECI, the "**Limited Partners**"). In concert with the Owner and the Limited Partners, H.R. Real Estate has determined that it is in its best economic interest to sell the Property and has entered into a purchase contact (the "**Contract**") with Hollow Creek Harmony Housing LP, a Georgia limited partnership qualified in Texas as Harmony Housing Conroe Property LP (as successor-by-assignment) from On Track Ministries, Inc., a Texas nonprofit corporation. H.R. Real Estate's decision to execute the Contract is an action of its own volition. H.R. Real Estate's participation in the development and operation of the Property has been and will continue to be substantive and meaningful until the sale of the Property.

H.R. Real Estate is respectfully requesting TDHCA's approval to remove the ongoing HUB requirement from its contract to facilitate the sale of the Property.

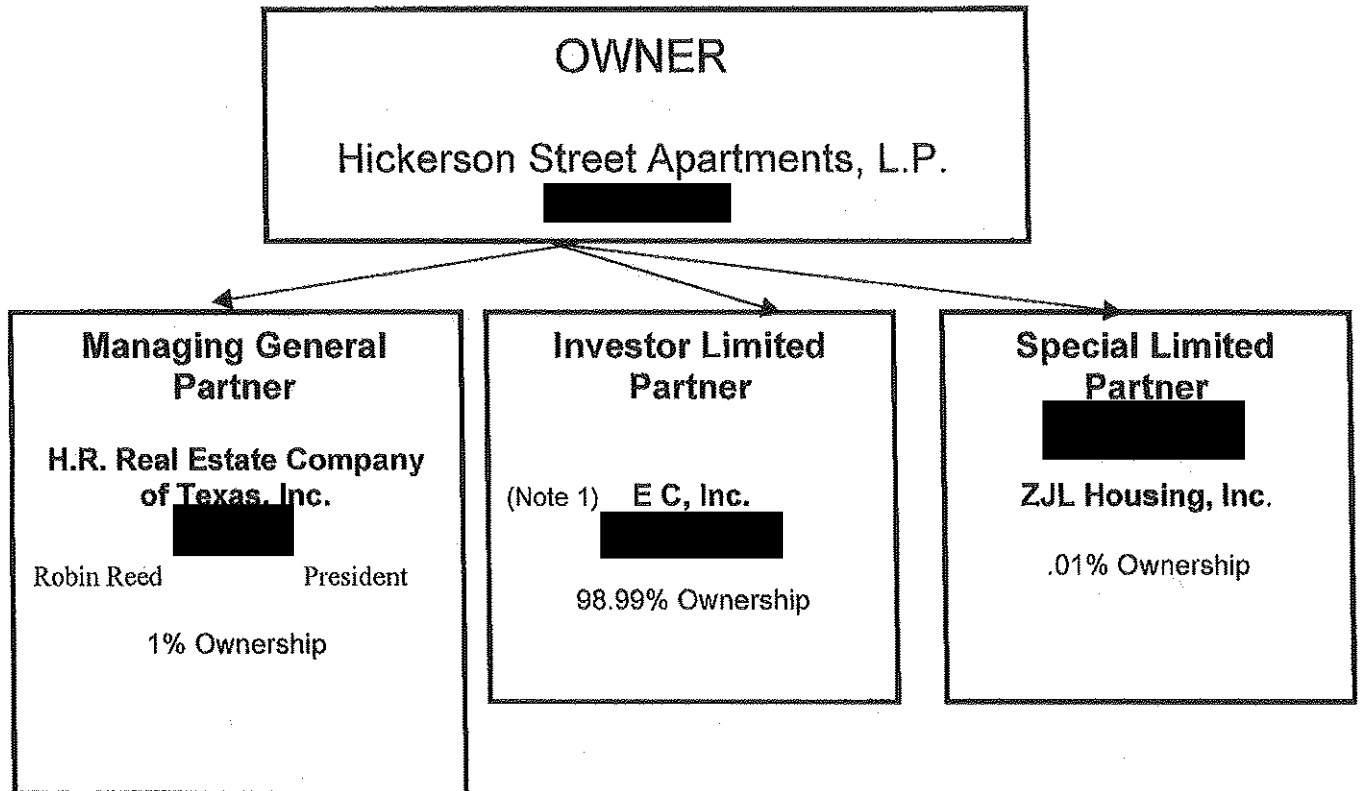
[Remainder of page intentionally left blank]

H.R. Real Estate Co. of Texas, Inc.,
a Texas corporation

By: 
Name: Robin Reed
Title: President

Hickerson Street Apartments, L.P. (Project Owner)

OWNERSHIP FLOW CHART



Note 1: G.E. Capital sold their interest in L.N. Realty, Inc. on 12-31-15 to EC, Inc. per above

Summary of Organizational Structure

Of

Hickerson Street Apartments, L.P.

Project Owner: Hickerson Street Apartments, L.P.

General Partner: H. R. Real Estate Company of Texas,
Inc.
(1% ownership)

President of General Partner: Robin Reed

Vice-President: Robert Penn

Authorized Representative
Of General Partner: William D. Henson

(Note 1) Investment Limited Partner: E C, Inc.
(98.99% ownership)

Special Limited Partner: ZJL Housing, Inc.
(.01% ownership)

Note 1: G.E. Capital sold their interest in L.N. Realty, Inc. on 12-31-15 to EC, Inc. per above.

HOLLOW CREEK
Conroe, Montgomery County, Texas
Structure: March 9, 2016

HOLLOW CREEK HARMONY HOUSING LP
(EIN pending)
(A Georgia Limited Partnership; Qualified in Texas)
(Assumed Name in Texas: Harmony Housing Conroe Property LP)
(Development Owner)

Limited Partner
99.99%

General Partner
0.01%

BAINBRIDGE PROPERTIES, L.L.C.
[REDACTED]
(A Georgia Limited Liability Company)
(Limited Partner)

HOLLOW CREEK HARMONY HOUSING GP LLC
[REDACTED]
(A Delaware Limited Liability Company; Qualified in Texas)
(Assumed Name in Texas: Harmony Housing Conroe Property GP LLC)
(General Partner)

100% Sole Member

100% Sole Member

SHIRLEY S. MILLER
(an individual resident of Georgia)
(Sole Member and Manager)

FOUNDATION FOR AFFORDABLE RENTAL HOUSING HOLDINGS INC.
[REDACTED]
(A Delaware Non-Stock, Not-for-Profit Corp.; Qualified in Texas)
(Sole Member of General Partner)

Officers and Board Members

- Joseph E. Thomas, III
Board Member
0%
- Stephen Rosenberg
Vice President & Secretary
Board Member
0%
- Lisa Lifshitz
Vice President & Asst. Secretary
Board Member
0%
- Terence Schwartz
Board Member
0%
- Kenneth Rogozinski
Board Member
0%
- Robert Barolak
President
0%

1j

BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action on Resolution 16-015 regarding the annual approval of the Department's Interest Rate Swap Policy.

RECOMMENDED ACTION

See attached Resolution.

BACKGROUND

The Department initially adopted an Interest Rate Swap Policy (the "Swap Policy") on September 9, 2004, to establish guidelines for the use and management of interest rate management agreements, including but not limited to, interest rate swaps, caps, collars, and floors incurred in connection with the issuance of debt obligations. The Swap Policy underwent substantial changes in 2009 and has had minor edits since. The attached revised policy incorporates minor changes from the previous Swap Policy. The Department's Swap Policy sets forth the manner of execution of Swaps and provides for security and payment provisions, risk considerations, and certain other relevant provisions.

The Department's Swap Policy requires an annual review of the Swap Policy by the Chief Financial Officer and the Director of Bond Finance. This review has been performed in consultation with the Department's Swap Advisor, George K. Baum & Company, to determine if modifications to the Swap Policy are recommended or necessary to conform to current market conditions.

Clean and black-line versions of the proposed Swap Policy are also attached for your reference.

RESOLUTION NO. 16-015

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INTEREST RATE SWAP POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Governing Board") desires to approve the Department's Interest Rate Swap Policy in the form presented to the Governing Board;

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 the Department's Interest Rate Swap Policy. The Interest Rate Swap Policy in the form presented to the Governing Board is hereby authorized and approved.

Section 1.2 ISDA Dodd-Frank Protocols. Each Authorized Representative is hereby severally authorized to take such actions as are necessary or desirable to enable the Board to adhere to any protocols promulgated by the International Swaps and Derivatives Association, Inc. ("ISDA") in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act, which adherence may (i) include the use of documents intended to address the subject matter of any such protocol but not using forms promulgated by ISDA, and (ii) be with respect to such counterparties as an Authorized Representative determines in his judgment are appropriate.

Section 1.3 Authorized Representatives. The following persons and each of them 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 Chief Financial Officer 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 Persons is authorized to act individually as set forth in this Resolution.

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 28th day of April, 2016.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

INTEREST RATE SWAP POLICY

As presented to the Board on April 28, 2016

2016

April 28, 2016

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INTEREST RATE SWAP POLICY

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.

The Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, 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 mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

I. Introduction

The purpose of this Interest Rate Swap Policy (“Policy”) of the Texas Department of Housing and Community Affairs (the “Department”) is to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, swaptions, caps, collars and floors (collectively “Swaps” or “Agreements”) incurred in connection with the issuance of debt obligations. This Policy sets forth the manner of execution of Swaps and provides for security and payment provisions, risk considerations, and certain other relevant provisions.

II. Authority

The Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into Swaps from time to time to better manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk.

This Policy shall govern the Department’s use and management of all Swaps. While adherence to this Policy is required in applicable circumstances, the Department recognizes that changes in the capital markets, agency programs, and other unforeseen circumstances may from time to time produce situations that are not covered by this Policy and will require modifications or exceptions approved or authorized by the Governing Board to achieve policy goals.

The Chief Financial Officer and the Director of Bond Finance are the designated administrators of the Department’s Policy. The Bond Finance Division shall have the day-to-day responsibility for structuring, implementing, and managing Swaps, which includes, with the approval of the Executive Director, the execution of the Department’s right to optional par termination of Swaps to avoid being overswapped (having a higher notional amount of swap outstanding than par amount of related bonds), for economic benefit to the Department, or to achieve other goals of the Department.

The Department shall be authorized to enter into Swaps only with qualified Swap counterparties as defined herein. The Director of Bond Finance, in consultation with the Chief Financial Officer, or a Department designee, shall have the authority to recommend counterparties, so long as the criteria set forth in this Policy are met.

The Chief Financial Officer and the Director of Bond Finance shall review this Policy on an annual basis and recommend any necessary changes to the Governing Board.

III. Purpose

The incurring of obligations by the Department involves a variety of interest rate payments and other risks for which a variety of financial instruments are available to offset, hedge, or reduce. It is the policy of the Department to utilize Swaps to better manage its assets and liabilities. The Department may execute Swaps if the transaction can be expected to result in one of, but not limited to, the following:

- Reduce exposure to changes in interest rates on a particular financial transaction or in the context of the management of interest rate risk derived from the Department's overall asset/liability balance.
- Result in a lower net cost of borrowing with respect to the Department's debt, a higher return on assets, and/or a stronger balance sheet.
- Manage variable interest rate exposure consistent with prudent debt practices.
- Achieve flexibility in meeting overall financial and programmatic objectives that cannot be achieved in conventional markets.
- Lock in fixed rates in current markets for use at a later date.
- Manage the Department's exposure to the risk of changes in the legal or regulatory treatment of tax-exempt bonds.
- Manage the Department's credit exposure to financial institutions.

The Department will not use Agreements that:

- Are purely speculative or incorporate extraordinary leverage;
- Lack adequate liquidity to terminate without incurring a significant bid/ask spread;
- Are characterized by insufficient pricing transparency and therefore make reasonable valuation difficult.

IV. Evaluation of Risks Associated with Swaps

Before entering into a Swap, the Department shall evaluate the risks inherent in the transaction. The risks to be evaluated will include basis risk, tax risk, counterparty risk, credit risk, termination risk, rollover risk, liquidity risk, remarketing risk, amortization mismatch risk, mortgage yield risk, non-origination risk, and PAC band risk. The following table outlines these various risks and the Department's evaluation methodology for those risks.

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Risk	Description	Evaluation Methodology
Basis Risk	The mismatch between actual variable rate debt service and variable rate indices used to determine Swap payments.	The Department will review historical trading differentials between the variable rate bonds and the index.
Tax Risk	The risk created by potential tax events that could affect Swap payments or their relationship to future bond payments.	The Department will review the tax events in proposed Swap agreements. The Department will evaluate the impact of potential changes in tax law on LIBOR indexed Swaps.
Counterparty Risk	The failure of the counterparty to make required payments or the occurrence of an event modifying the credit rating of the counterparty.	The Department will monitor exposure levels, ratings thresholds, and collateralization requirements.
Termination Risk	The need to terminate the transaction in a market that dictates a termination payment by the Department.	The Department will compute its termination exposure for all existing and proposed Swaps at market value and under a worst-case scenario.
Rollover Risk	The mismatch of the maturity of the Swap and the maturity of the underlying bonds.	The Department will determine its capacity to service variable rate bonds that may be outstanding after the maturity of the Swap.
Liquidity Risk	The inability to continue or renew a liquidity facility, and the risk that the cost of a facility will increase beyond expectations.	The Department will evaluate the expected availability of liquidity support for swapped and unhedged variable rate debt, if any.
Remarketing Risk	The risk that a remarketing agent may be unable to remarket VRDBs.	The Department will obtain a standby bond purchase facility to provide the funds necessary to purchase the VRDBs.
Amortization Mismatch Risk	The mismatch of outstanding Swap notional amount versus the outstanding bond principal subject to the hedge.	The Department may incorporate one or a combination of the following features: par termination options, PAC or lockout bonds.
Mortgage Yield Risk	The bond issue may not comply with yield restrictions if the Swap is terminated.	The Department will obtain legal opinions and or certificates as appropriate.
Non-origination Risk	The bond proceeds may not originate within the prescribed timeframe and require an unused proceeds call and possible termination payment.	The Department will evaluate bond and mortgage market conditions and quantify the potential termination payment due upon non-origination.

PAC Band Break Risk	The targeted PAC bonds may amortize faster than anticipated based on the PAC amortization schedule.	The Department will rely upon credit rating agency cashflows to ensure adequate PAC/companion bond structural integrity.
Collateral Posting Risk	The risk that the Department may be required to post liquid collateral to the Counterparty. Inability to post such liquid collateral upon short notice may result in the early termination of a Swap transaction.	The Department will seek to structure Swap Agreements so that the need to post collateral is highly unlikely. This can be accomplished by using high posting thresholds or low rating triggers.
Accounting Risk	The risk that the Department may be required to record changes in fair value of a derivative transaction as a gain or loss in its annual financial statements.	The Department, when feasible, should aim to structure Transactions that would expect to qualify as effective hedges under GASB 53.

The Department will diversify its exposure to counterparties. To that end, before entering into a transaction, the Department will determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect that exposure. The exposure will not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the Department's exposure ("Maximum Net Termination Exposure"). For purposes of these limits, "Maximum Net Termination Exposure" shall equal the aggregate termination payment for all existing and projected Swaps that would be paid by an individual counterparty. For purposes of this calculation, the aggregate termination payment is equal to the reasonably expected worse case termination payment of all existing Swaps plus the proposed transaction.

The Department will base the Maximum Net Termination Exposure on all outstanding derivative transactions. Limits will be established for each counterparty as well as the relative level of risk associated with each existing and projected Swap. In order to lessen counterparty risk, the Department will diversify exposure among multiple counterparties and avoid excessive concentration to any one counterparty. In situations where the Department may execute a swap transaction that would result in offsetting counterparty risk with an existing counterparty, the Department should seek to utilize that counterparty.

The Director of Bond Finance shall determine the appropriate term for a Swap on a case-by-case basis. The slope of the Swap curve, the marginal change in Swap rates from year to year along the Swap curve, and the impact that the term of the Swap has on the overall exposure of the Department shall be considered in determining the appropriate term of any Swap. The term of a Swap between the Department and a qualified Swap counterparty shall not extend beyond the final maturity date of the associated debt, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

The Department will review the use of forward-starting swaps and determine the duration based on market condition and the risk associated with using a forward-starting swap. The Department does not have any swaps with a knock-out option which could expose the Department to higher interest rates. The Department will advise the Board prior to entering into either a forward-starting swap or knock-out option.

The Department will inform the Board if the swap is a fixed notional value swap or a declining notional value swap. The Director of Bond Finance will review proposed swaps to ensure that the use of fixed notional value swaps does not place the Department at risk of incurring an incrementally higher expense if the related bond principal is paid off early.

The total “net notional amount” of all Swaps related to a bond issue should not exceed the amount of outstanding bonds, or bonds anticipated to be issued. For purposes of calculating the net notional amount, credit shall be given to any Swaps that offset another Swap for a specific bond transaction.

V. Long Term Financial Implications

In evaluating a particular transaction involving the use of derivatives, the Department shall review long-term implications associated with entering into derivatives, including costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, liquidity capacity, opportunities to refund related debt obligations and other similar considerations.

Impact of Use of Liquidity

The Department shall consider the impact of any variable rate demand bonds issued in combination with a Swap on the availability and cost of liquidity support for other Department variable rate programs.

Call Option Value considerations

When considering the relative advantage of a Swap versus fixed rate bonds, the Department will take into consideration the value of any call option on fixed rate bonds.

Qualified Hedges

The Department understands that, (1) if payments on and receipts from the Agreement are to be taken into account in computing the yield on the related bonds, the Agreement must meet the requirements for a “qualified hedge” under federal tax law (sometimes referred to as an “integrated Swap”); and (2) if one of the goals of entering into the Agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a “super integrated Swap”), then certain additional requirements must be met. In both of these situations, the terms of the Agreement and the process for entering into the Agreement must be reviewed and approved in advance by tax counsel.

VI. Form of Swap Agreements

Each Swap executed by the Department shall contain terms and conditions as set forth in the International Swap and Derivatives Association, Inc. (“ISDA”) Master Agreement, including any schedules and confirmations. The Swaps between the Department and each qualified Swap counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Bond Finance deems necessary, desirable or consistent with industry best practices.

VII. Qualified Swap Counterparties

The Department will make its best efforts to work with qualified Swap counterparties that (i) have, or has a credit support counterparty that has, a general credit rating of at least “A2” with respect to ratings by Moody’s Investors Service or “A” with respect to ratings by Standard and Poor’s Rating Services or Fitch Ratings.

In addition to the rating criteria specified herein, the Department may seek additional credit enhancement and safeguards in the form of:

- i. Contingent credit support or enhancement;
- ii. Collateral consistent with the policies contained herein; and/or
- iii. Ratings downgrade triggers.

In addition, the Department will take into consideration a Swap counterparty’s track record of successfully executing Swap transactions. The Department will only execute Swap transactions with qualified Swap counterparties.

VIII. Termination Provisions

The Department shall include in all Swaps provisions granting the Department the right to optionally terminate a Swap at any time at market over the term of the Agreement. The Chief Financial Officer and Director of Bond Finance shall determine if it is financially advantageous for the Department to terminate a Swap.

A ratings-based additional termination event shall be included in all of the Department’s Swaps if the provider (or its credit support provider) fails to maintain either:

1. A credit rating of at least Baa2 from Moody’s; or
2. A credit rating of at least BBB from S&P; or,
3. An equivalent rating determined above by a nationally recognized ratings service acceptable to both parties.

A termination payment to or from the Department may be required in the event of termination of a Swap due to a default or a decrease in credit rating of either the Department or the counterparty. If the cause of the termination is a counterparty downgrade, termination payments will be calculated on the side of the bid-offer spread that favors the Department. Additionally, the termination amount of the Swap should seek to compensate the Department, as allowed under the ISDA Agreement, all other costs for creating a replacement transaction of like terms and conditions.

It is the intent of the Department not to make a termination payment to a counterparty that does not meet its contractual obligations. Prior to making any such termination payment, the Chief Financial Officer and Director of Bond Finance shall evaluate whether it is financially advantageous for the Department to obtain a replacement counterparty to avoid making such termination payment or finance the termination payment through a long-term financing product.

For payments on early termination and optional termination, Market Quotation and the Second Method will apply, allowing for two way mark-to-market breakage (assuming the Swaps are documented under the 1992 form of the ISDA Master Agreements).

IX. Security and Source of Repayment

The Department may use the same security and source of repayment (pledged revenues) for Swaps as is used for the bonds that are hedged or carried by the Swap, if any, but shall consider the economic costs and benefits of subordinating the Department's payments and/or termination payment under the Swap. The use of the same security and source of repayment (pledged revenues) is subject to the respective bond indenture's covenants and the prior approval of the Department's bond counsel.

X. Specified Indebtedness

The specified indebtedness related to credit events in any Swap should be narrowly defined and refer only to indebtedness of the Department that could have a materially adverse effect on the Department's ability to perform its obligations under the Swap. Debt should typically only include obligations within the same lien as the Swap obligation.

XI. Governing Law

Governing law for Swaps will be the State of Texas. Issues relating to jurisdiction, venue, waiver of jury trial and sovereign immunity will be subject to prevailing law and approval of the Texas Attorney General Office. Preference will be given to language providing that the counterparty will consent to jurisdiction in the Texas courts with respect to enforcement of the Agreement.

XII. Events of Default

Events of default of a Swap counterparty shall include, but are not limited to the counterparty's:

1. Failure to make payments when due;
2. Breach of representations and warranties;
3. Illegality;
4. Failure to comply with downgrade provisions; and
5. Failure to comply with any other provisions of the Agreement after a specified notice period.

XIII. Collateral Requirements

As part of any Swap, the Department may require the counterparty or the counterparty may require the Department to post collateral or other credit enhancement to secure any or all Swap payment obligations. As appropriate, the Chief Financial Officer and Director of Bond Finance may require collateral or other credit enhancement to be posted by each Swap counterparty under the following circumstances:

- Each counterparty to the Department may be required to post collateral if the credit rating of the counterparty or parent falls below a certain rating threshold, which varies by counterparty. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the credit support annex to each Swap with the Department. At the current time, collateral posting rating triggers by the counterparties would range from A2/A to Baa1/BBB+.
- Collateral shall consist of cash, U.S. Treasury securities, or other mutually acceptable highly liquid securities.

- Collateral shall be deposited with an eligible third party custodian, or as mutually agreed upon between the Department and each counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The Department will determine reasonable threshold limits for increments of collateral posting based on a sliding scale reflective of credit ratings.
- The Chief Financial Officer and Director of Bond Finance shall determine on a case-by-case basis whether a form of credit enhancement in lieu of, or in addition to, collateral is more beneficial to the Department.
- The Department shall seek to not post collateral to the counterparty unless the Department's ratings fall below "A2" or "A".

XIV. Other Criteria

The Department may use a competitive or a negotiated process to select a Swap counterparty and price a Swap as it believes business, market or competitive conditions justify such a process. The conditions under which a negotiated selection is best used are provided below.

- Marketing of the Swap will require complex explanations about the security for payment or credit quality.
- Demand is weak among Swap counterparties.
- Market timing is important, such as for refundings.
- Coordination of multiple components of the financing is required.
- The Swap has non-standard features.
- The par amount is large enough to move the market in a manner adverse to the Department's interests.
- Counterparties are likely to demand individual changes in bid documents.

If a transaction is awarded through a negotiated process, the counterparty will provide the Department with:

- A statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions.
- A statement of the amount of the difference as determined by the counterparty.
- If the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty.

The Department will use a swap advisory firm to assist in the price negotiation. Such swap advisory firm shall act as the "qualified independent representative" ("QIR") of the Department for purposes of CFTC Rule 23.450 (b) (1) to advise the Department on swaps, provided that such firm provide certification to the Department addressing why such firm meets the requirements to act as a QIR pursuant to CFTC Regulation 23.450(b)(1). Also, the Department may obtain an opinion from an independent party that the terms and conditions of any derivative entered into reflect a fair market value of such derivatives as of the execution date.

The counterparty must provide to the Department disclosure of any payments the counterparty made to another person to procure the transaction.

Prior to or at execution of any new swap transaction, the swap dealer and/or swap advisor, as the case may be, shall provide information to the Department consistent with the rules and regulations in effect at the time. Such rules would include the Business Conduct Standards for Swap Dealers

and Major Swap Participants as published and enacted by the Commodity Futures Trading Commission. In addition the swap dealer should represent to the Department that it is in compliance with such rules including pay-to-play restrictions.

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:

- its purpose;
- the anticipated economic benefit and the method used to determine the anticipated benefit;
- the use of the receipts of the transaction;
- the notional amount, amortization, and average life compared to the related obligation;
- any floating indices;
- its effective date and duration;
- the identity and credit rating of the counterparties;
- the cost and anticipated benefit of transaction insurance;
- the financial advisors and the legal advisors and their fees;
- any security for scheduled and early termination payments;
- any associated risks and risk mitigation features; and
- early termination provisions.

XV. Ongoing Monitoring and Reporting Requirements

Written records noting the status of all Swaps will be maintained by the Bond Finance Division and shall include the following information:

- Highlights of all material changes to Swaps or new Swaps entered into by the Department since the last report.
- Market value of each of the Swaps.
- The net impact of a 50 or 100 basis point parallel shift or other relevant shift in the appropriate Swap index or curve.
- For each counterparty, the total notional amount, the average life of each Swap and the remaining term of each Swap.
- The credit rating of each Swap counterparty and credit enhancer insuring Swap payments.
- Actual collateral posting by Swap counterparty, if any, in total by Swap counterparty.
- A summary of each Swap, including but not limited to the type of Swap, the rates paid by the Department and received by the Department, indices, and other key terms.
- Information concerning any default by a Swap counterparty to the Department, and the results of the default, including but not limited to the financial impact to the Department, if any.
- A summary of any Swaps that were terminated.

The Department will monitor its Swaps exposure on a periodic basis, as necessary, and will look for ways to reduce the cost of a Swap(s) or the overall Swap exposure.

The Bond Finance Division will monitor the performance of the QIR on an on-going basis.

The Department shall report its Swaps exposure in its annual financial statements and will reflect the use of derivatives in accordance with GASB requirements. With the adoption of GASB 53, the Department will be required to test hedge effectiveness on an annual basis. Any hedge deemed to be ineffective will result in the change in fair value being recorded as a gain or loss. While the long term economic value of the transaction should be more important when structuring a derivative, the Department should seek to structure transactions that are expected to be effective and would not result in changes in fair value affecting net income. For example, while a transaction structured to meet the Consistent Critical Terms method of GASB 53 would ensure hedge effectiveness, the Department should consider the tradeoffs of utilizing a transaction structure that may provide greater expected economic benefits at the expense of potentially not meeting hedge effectiveness. The disclosure requirements include:

1. Objective of the Derivative
2. Significant Terms
3. Fair Value
4. Associated Debt
5. Risks including but not limited to Credit Risk, Termination Risk, Interest Rate Risk, Basis Risk, Rollover Risk, Market Access Risk, Foreign Currency Risk .

The Chief Financial Officer and the Director of Bond Finance will review this Policy on an annual basis.

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

As presented to the Board on April ~~2816~~, 201~~65~~

201~~65~~

April ~~2816~~, 201~~65~~

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INTEREST RATE SWAP POLICY

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.

The Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the “State”); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, 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 mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

I. Introduction

The purpose of this Interest Rate Swap Policy (“Policy”) of the Texas Department of Housing and Community Affairs (the “Department”) is to establish guidelines for the use and management of all interest rate management agreements, including, but not limited to, interest rate swaps, swaptions, caps, collars and floors (collectively “Swaps” or “Agreements”) incurred in connection with the issuance of debt obligations. This Policy sets forth the manner of execution of Swaps and provides for security and payment provisions, risk considerations, and certain other relevant provisions.

II. Authority

The Department is authorized by Sections 1371.056 and 2306.351 of the Texas Government Code to enter into Swaps from time to time to better manage assets and liabilities and take advantage of market conditions to lower overall costs and reduce interest rate risk.

This Policy shall govern the Department’s use and management of all Swaps. While adherence to this Policy is required in applicable circumstances, the Department recognizes that changes in the capital markets, agency programs, and other unforeseen circumstances may from time to time produce situations that are not covered by this Policy and will require modifications or exceptions approved or authorized by the Governing Board to achieve policy goals.

The Chief Financial Officer and the Director of Bond Finance are the designated administrators of the Department’s Policy. The Bond Finance Division shall have the day-to-day responsibility for structuring, implementing, and managing Swaps, which includes, with the approval of the Executive Director, the execution of the Department’s right to optional par termination of Swaps to avoid being overswapped (having a higher notional amount of swap outstanding than par amount of related bonds), for economic benefit to the Department, or to achieve other goals of the Department.

The Department shall be authorized to enter into Swaps only with qualified Swap counterparties as defined herein. The Director of Bond Finance, in consultation with the Chief Financial Officer, or a Department designee, shall have the authority to recommend counterparties, so long as the criteria set forth in this Policy are met.

The Chief Financial Officer and the Director of Bond Finance shall review this Policy on an annual basis and recommend any necessary changes to the Governing Board.

III. Purpose

The incurring of obligations by the Department involves a variety of interest rate payments and other risks for which a variety of financial instruments are available to offset, hedge, or reduce. It is the policy of the Department to utilize Swaps to better manage its assets and liabilities. The Department may execute Swaps if the transaction can be expected to result in one of, but not limited to, the following:

- Reduce exposure to changes in interest rates on a particular financial transaction or in the context of the management of interest rate risk derived from the Department's overall asset/liability balance.
- Result in a lower net cost of borrowing with respect to the Department's debt, a higher return on assets, and/or a stronger balance sheet.
- Manage variable interest rate exposure consistent with prudent debt practices.
- Achieve flexibility in meeting overall financial and programmatic objectives that cannot be achieved in conventional markets.
- Lock in fixed rates in current markets for use at a later date.
- Manage the Department's exposure to the risk of changes in the legal or regulatory treatment of tax-exempt bonds.
- Manage the Department's credit exposure to financial institutions.

The Department will not use Agreements that:

- Are purely speculative or incorporate extraordinary leverage;
- Lack adequate liquidity to terminate without incurring a significant bid/ask spread;
- Are characterized by insufficient pricing transparency and therefore make reasonable valuation difficult.

IV. Evaluation of Risks Associated with Swaps

Before entering into a Swap, the Department shall evaluate the risks inherent in the transaction. The risks to be evaluated will include basis risk, tax risk, counterparty risk, credit risk, termination risk, rollover risk, liquidity risk, remarketing risk, amortization mismatch risk, mortgage yield risk, non-origination risk, and PAC band risk. The following table outlines these various risks and the Department's evaluation methodology for those risks.

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Risk	Description	Evaluation Methodology
Basis Risk	The mismatch between actual variable rate debt service and variable rate indices used to determine Swap payments.	The Department will review historical trading differentials between the variable rate bonds and the index.
Tax Risk	The risk created by potential tax events that could affect Swap payments or their relationship to future bond payments.	The Department will review the tax events in proposed Swap agreements. The Department will evaluate the impact of potential changes in tax law on LIBOR indexed Swaps.
Counterparty Risk	The failure of the counterparty to make required payments or the occurrence of an event modifying the credit rating of the counterparty.	The Department will monitor exposure levels, ratings thresholds, and collateralization requirements.
Termination Risk	The need to terminate the transaction in a market that dictates a termination payment by the Department.	The Department will compute its termination exposure for all existing and proposed Swaps at market value and under a worst-case scenario.
Rollover Risk	The mismatch of the maturity of the Swap and the maturity of the underlying bonds.	The Department will determine its capacity to service variable rate bonds that may be outstanding after the maturity of the Swap.
Liquidity Risk	The inability to continue or renew a liquidity facility, and the risk that the cost of a facility will increase beyond expectations.	The Department will evaluate the expected availability of liquidity support for swapped and unhedged variable rate debt, if any.
Remarketing Risk	The risk that a remarketing agent may be unable to remarket VRDBs.	The Department will obtain a standby bond purchase facility to provide the funds necessary to purchase the VRDBs.
Amortization Mismatch Risk	The mismatch of outstanding Swap notional amount versus the outstanding bond principal subject to the hedge.	The Department may incorporate one or a combination of the following features: par termination options, PAC or lockout bonds.
Mortgage Yield Risk	The bond issue may not comply with yield restrictions if the Swap is terminated.	The Department will obtain legal opinions and or certificates as appropriate.
Non-origination Risk	The bond proceeds may not originate within the prescribed timeframe and require an unused proceeds call and possible termination payment.	The Department will evaluate bond and mortgage market conditions and quantify the potential termination payment due upon non-origination.

PAC Band Break Risk	The targeted PAC bonds may amortize faster than anticipated based on the PAC amortization schedule.	The Department will rely upon credit rating agency cashflows to ensure adequate PAC/companion bond structural integrity.
Collateral Posting Risk	The risk that the Department may be required to post liquid collateral to the Counterparty. Inability to post such liquid collateral upon short notice may result in the early termination of a Swap transaction.	The Department will seek to structure Swap Agreements so that the need to post collateral is highly unlikely. This can be accomplished by using high posting thresholds or low rating triggers.
Accounting Risk	The risk that the Department may be required to record changes in fair value of a derivative transaction as a gain or loss in its annual financial statements.	The Department, when feasible, should aim to structure Transactions that would expect to qualify as effective hedges under GASB 53.

The Department will diversify its exposure to counterparties. To that end, before entering into a transaction, the Department will determine its exposure to the relevant counterparty or counterparties and determine how the proposed transaction would affect that exposure. The exposure will not be measured solely in terms of notional amount, but rather how changes in interest rates would affect the Department’s exposure (“Maximum Net Termination Exposure”). For purposes of these limits, “Maximum Net Termination Exposure” shall equal the aggregate termination payment for all existing and projected Swaps that would be paid by an individual counterparty. For purposes of this calculation, the aggregate termination payment is equal to the reasonably expected worse case termination payment of all existing Swaps plus the proposed transaction.

The Department will base the Maximum Net Termination Exposure on all outstanding derivative transactions. Limits will be established for each counterparty as well as the relative level of risk associated with each existing and projected Swap. In order to lessen counterparty risk, the Department will diversify exposure among multiple counterparties and avoid excessive concentration to any one counterparty. In situations where the Department may execute a swap transaction that would result in offsetting counterparty risk with an existing counterparty, the Department should seek to utilize that counterparty.

The Director of Bond Finance shall determine the appropriate term for a Swap on a case-by-case basis. The slope of the Swap curve, the marginal change in Swap rates from year to year along the Swap curve, and the impact that the term of the Swap has on the overall exposure of the Department shall be considered in determining the appropriate term of any Swap. The term of a Swap between the Department and a qualified Swap counterparty shall not extend beyond the final maturity date of the associated debt, or in the case of a refunding transaction, beyond the final maturity date of the refunding bonds.

The Department will review the use of forward-starting swaps and determine the duration based on market condition and the risk associated with using a forward-starting swap. The Department does not have any swaps with a knock-out option which could expose the Department to higher interest rates. The Department will advise the Board prior to entering into either a forward-starting swap or knock-out option.

The Department will inform the Board if the swap is a fixed notional value swap or a declining notional value swap. The Director of Bond Finance will review proposed swaps ~~under its bond compliance monitoring process~~ to ensure that the use of fixed notional value swaps does not place the Department at risk of incurring an incrementally higher expense if the related bond principal is paid off early.

The total “net notional amount” of all Swaps related to a bond issue should not exceed the amount of outstanding bonds, or bonds anticipated to be issued. For purposes of calculating the net notional amount, credit shall be given to any Swaps that offset another Swap for a specific bond transaction.

V. Long Term Financial Implications

In evaluating a particular transaction involving the use of derivatives, the Department shall review long-term implications associated with entering into derivatives, including costs of borrowing, historical interest rate trends, variable rate capacity, credit enhancement capacity, liquidity capacity, opportunities to refund related debt obligations and other similar considerations.

Impact of Use of Liquidity

The Department shall consider the impact of any variable rate demand bonds issued in combination with a Swap on the availability and cost of liquidity support for other Department variable rate programs.

Call Option Value considerations

When considering the relative advantage of a Swap versus fixed rate bonds, the Department will take into consideration the value of any call option on fixed rate bonds.

Qualified Hedges

The Department understands that, (1) if payments on and receipts from the Agreement are to be taken into account in computing the yield on the related bonds, the Agreement must meet the requirements for a “qualified hedge” under federal tax law (sometimes referred to as an “integrated Swap”); and (2) if one of the goals of entering into the Agreement is to convert variable yield bonds into fixed yield bonds (sometimes referred to as a “super integrated Swap”), then certain additional requirements must be met. In both of these situations, the terms of the Agreement and the process for entering into the Agreement must be reviewed and approved in advance by tax counsel.

VI. Form of Swap Agreements

Each Swap executed by the Department shall contain terms and conditions as set forth in the International Swap and Derivatives Association, Inc. (“ISDA”) Master Agreement, including any schedules and confirmations. The Swaps between the Department and each qualified Swap counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions and provisions as the Director of Bond Finance deems necessary, desirable or consistent with industry best practices.

VII. Qualified Swap Counterparties

The Department will make its best efforts to work with qualified Swap counterparties that (i) have, or has a credit support counterparty that has, a general credit rating of at least “A2” with respect to ratings by Moody’s Investors Service or “A” with respect to ratings by Standard and Poor’s Rating Services or Fitch Ratings.

In addition to the rating criteria specified herein, the Department may seek additional credit enhancement and safeguards in the form of:

- i. Contingent credit support or enhancement;
- ii. Collateral consistent with the policies contained herein; and/or
- iii. Ratings downgrade triggers.

In addition, the Department will take into consideration a Swap counterparty’s track record of successfully executing Swap transactions. The Department will only execute Swap transactions with qualified Swap counterparties.

VIII. Termination Provisions

The Department shall include in all Swaps provisions granting the Department the right to optionally terminate a Swap at any time at market over the term of the Agreement. The Chief Financial Officer and Director of Bond Finance shall determine if it is financially advantageous for the Department to terminate a Swap.

A ratings-based additional termination event shall be included in all of the Department’s Swaps if the provider (or its credit support provider) fails to maintain either:

1. A ~~C~~redit ~~R~~ating of at least Baa2 from Moody’s; or
2. A ~~C~~redit ~~R~~ating of at least BBB from S&P; or,
3. An equivalent rating determined above by a nationally recognized ratings service acceptable to both parties.

A termination payment to or from the Department may be required in the event of termination of a Swap due to a default or a decrease in credit rating of either the Department or the counterparty. If the cause of the termination is a counterparty downgrade, termination payments will be calculated on the side of the bid-offer spread that favors the Department. Additionally, the termination amount of the Swap should seek to compensate the Department, as allowed under the ISDA Agreement, all other costs for creating a replacement transaction of like terms and conditions.

It is the intent of the Department not to make a termination payment to a counterparty that does not meet its contractual obligations. Prior to making any such termination payment, the Chief Financial Officer and Director of Bond Finance shall evaluate whether it is financially advantageous for the Department to obtain a replacement counterparty to avoid making such termination payment or finance the termination payment through a long-term financing product.

For payments on early termination and optional termination, Market Quotation and the Second Method will apply, allowing for two way mark-to-market breakage (assuming the Swaps are documented under the 1992 form of the ISDA Master Agreements).

IX. Security and Source of Repayment

The Department may use the same security and source of repayment (pledged revenues) for Swaps as is used for the bonds that are hedged or carried by the Swap, if any, but shall consider the economic costs and benefits of subordinating the Department's payments and/or termination payment under the Swap. The use of the same security and source of repayment (pledged revenues) is subject to the respective bond indenture's covenants and the prior approval of the Department's bond counsel.

X. Specified Indebtedness

The specified indebtedness related to credit events in any Swap should be narrowly defined and refer only to indebtedness of the Department that could have a materially adverse effect on the Department's ability to perform its obligations under the Swap. Debt should typically only include obligations within the same lien as the Swap obligation.

XI. Governing Law

Governing law for Swaps will be the State of Texas. Issues relating to jurisdiction, venue, waiver of jury trial and sovereign immunity will be subject to prevailing law and approval of the Texas Attorney General Office. Preference will be given to language providing that the counterparty will consent to jurisdiction in the Texas courts with respect to enforcement of the Agreement.

XII. Events of Default

Events of default of a Swap counterparty shall include, but are not limited to the counterparty's:

1. Failure to make payments when due;
2. Breach of representations and warranties;
3. Illegality;
4. Failure to comply with downgrade provisions; and
5. Failure to comply with any other provisions of the Agreement after a specified notice period.

XIII. Collateral Requirements

As part of any Swap, the Department may require the counterparty or the counterparty may require the Department to post collateral or other credit enhancement to secure any or all Swap payment obligations. As appropriate, the Chief Financial Officer and Director of Bond Finance may require collateral or other credit enhancement to be posted by each Swap counterparty under the following circumstances:

- Each counterparty to the Department may be required to post collateral if the credit rating of the counterparty or parent falls below a certain rating threshold, which varies by counterparty. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the credit support annex to each Swap with the Department. At the current time, collateral posting rating triggers by the counterparties would range from A2/A to Baa1/BBB+.
- Collateral shall consist of cash, U.S. Treasury securities, or other mutually acceptable highly liquid securities.

- Collateral shall be deposited with an eligible third party custodian, or as mutually agreed upon between the Department and each counterparty.
- The market value of the collateral shall be determined on at least a weekly basis.
- The Department will determine reasonable threshold limits for increments of collateral posting based on a sliding scale reflective of credit ratings.
- The Chief Financial Officer and Director of Bond Finance shall determine on a case-by-case basis whether a form of credit enhancement in lieu of, or in addition to, collateral is more beneficial to the Department.
- The Department shall seek to not post collateral to the counterparty unless the Department's ratings fall below "A2" or "A".

XIV. Other Criteria

The Department may use a competitive or a negotiated process to select a Swap counterparty and price a Swap as it believes business, market or competitive conditions justify such a process. The conditions under which a negotiated selection is best used are provided below.

- Marketing of the Swap will require complex explanations about the security for payment or credit quality.
- Demand is weak among Swap counterparties.
- Market timing is important, such as for refundings.
- Coordination of multiple components of the financing is required.
- The Swap has non-standard features.
- The par amount is large enough to move the market in a manner adverse to the Department's interests.
- Counterparties are likely to demand individual changes in bid documents.

If a transaction is awarded through a negotiated process, the counterparty will provide the Department with:

- A statement that, in the counterparty's judgment, the difference in basis points between the rate of the transaction and the mid-market rate for a comparable transaction falls within the commonly occurring range for comparable transactions.
- A statement of the amount of the difference as determined by the counterparty.
- If the counterparty does not know of a comparable transaction or mid-market rate, a statement of another suitable measure of pricing acceptable to the counterparty.

The Department will use a swap advisory firm to assist in the price negotiation. Such swap advisory firm shall act as the "qualified independent representative" ("QIR") of the Department for purposes of CFTC Rule 23.450 (b) (1) to advise the Department on swaps, provided that such firm provide certification to the Department addressing why such firm meets the requirements to act as a QIR pursuant to CFTC Regulation 23.450(b)(1). Also, the Department may obtain an opinion from an independent party that the terms and conditions of any derivative entered into reflect a fair market value of such derivatives as of the execution date.

The counterparty must provide to the Department disclosure of any payments the counterparty made to another person to procure the transaction.

Prior to or at execution of any new swap transaction, the swap dealer and/or swap advisor, as the case may be, shall provide information to the Department consistent with the rules and regulations in effect at the time. Such rules would include the Business Conduct Standards for Swap Dealers

and Major Swap Participants as published and enacted by the Commodity Futures Trading Commission. In addition the swap dealer should represent to the Department that it is in compliance with such rules including pay-to-play restrictions.

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:

- its purpose;
- the anticipated economic benefit and the method used to determine the anticipated benefit;
- the use of the receipts of the transaction;
- the notional amount, amortization, and average life compared to the related obligation;
- any floating indices;
- its effective date and duration;
- the identity and credit rating of the counterparties;
- the cost and anticipated benefit of transaction insurance;
- the financial advisors and the legal advisors and their fees;
- any security for scheduled and early termination payments;
- any associated risks and risk mitigation features; and
- early termination provisions.

XV. Ongoing Monitoring and Reporting Requirements

Written records noting the status of all Swaps will be maintained by the Bond Finance Division and shall include the following information:

- Highlights of all material changes to Swaps or new Swaps entered into by the Department since the last report.
- Market value of each of the Swaps.
- The net impact of a 50 or 100 basis point parallel shift or other relevant shift in the appropriate Swap index or curve.
- For each counterparty, the total notional amount, the average life of each Swap and the remaining term of each Swap.
- The credit rating of each Swap counterparty and credit enhancer insuring Swap payments.
- Actual collateral posting by Swap counterparty, if any, in total by Swap counterparty.
- A summary of each Swap, including but not limited to the type of Swap, the rates paid by the Department and received by the Department, indices, and other key terms.
- Information concerning any default by a Swap counterparty to the Department, and the results of the default, including but not limited to the financial impact to the Department, if any.
- A summary of any Swaps that were terminated.

The Department will monitor its Swaps exposure on a periodic basis, as necessary, and will look for ways to reduce the cost of a Swap(s) or the overall Swap exposure.

The Bond Finance Division will monitor the performance of the QIR on an on-going basis.

The Department shall report its Swaps exposure in its annual financial statements and will reflect the use of derivatives in accordance with GASB requirements. With the adoption of GASB 53, the Department will be required to test hedge effectiveness on an annual basis. Any hedge deemed to be ineffective will result in the change in fair value being recorded as a gain or loss. While the long term economic value of the transaction should be more important when structuring a derivative, the Department should seek to structure transactions that are expected to be effective and would not result in changes in fair value affecting net income. For example, while a transaction structured to meet the Consistent Critical Terms method of GASB 53 would ensure hedge effectiveness, the Department should consider the tradeoffs of utilizing a transaction structure that may provide greater expected economic benefits at the expense of potentially not meeting hedge effectiveness. The disclosure requirements include:

1. Objective of the Derivative
2. Significant Terms
3. Fair Value
4. Associated Debt
5. Risks including but not limited to Credit Risk, Termination Risk, Interest Rate Risk, Basis Risk, Rollover Risk, Market Access Risk, Foreign Currency Risk .

The Chief Financial Officer and the Director of Bond Finance will review this Policy on an annual basis.

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BOARD ACTION REQUEST
BOND FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action on Resolution 16-016 regarding the annual approval of the Department's Investment Policy.

RECOMMENDED ACTION

See attached Resolution.

BACKGROUND

The Public Funds Investment Act ("PFIA") requires State Agency Boards that have investments to develop, adopt annually, and maintain an Investment Policy that outlines the purpose of investments and the types of permissible investments, designates an Investment Officer, selects a reporting format and frequency, and requires training for Investment Officers and Board Members. The Investment Policy also details ethics and conflict of interest rules to which the Department must adhere. It requires that investment professionals acknowledge receipt of the policy in order to do business with the Department. David Cervantes, Chief Financial Officer, and Monica Galuski, Director of Bond Finance are the Department's Investment Officers.

The Investment Officers, in conjunction with Department staff, have reviewed the investment policy that was approved on April 16, 2015, and recommends approval of the proposed policy with only minor changes.

Clean and black-line versions of the proposed Investment Policy are attached for your reference.

RESOLUTION NO. 16-016

RESOLUTION OF THE GOVERNING BOARD APPROVING THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS INVESTMENT POLICY

WHEREAS, the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas (the "Department"), was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (together with other laws of the State applicable to the Department, collectively, the "Act"); and

WHEREAS, the Governing Board of the Department (the "Governing Board") desires to approve the Department's Investment Policy in the form presented to the Governing Board;

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 the Department's Investment Policy. The Investment Policy in the form presented to the Governing Board is hereby authorized and approved.

Section 1.2 Authorized Representatives. The following persons and each of them 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 Chief Financial Officer 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 Persons is authorized to act individually as set forth in this Resolution.

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 28th day of April, 2016.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

**TEXAS DEPARTMENT OF HOUSING
AND COMMUNITY AFFAIRS**

INVESTMENT POLICY

As presented to the Board for adoption on April 28, 2016

2016

April 28, 2016

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

I. POLICY

It is the policy of the Texas Department of Housing and Community Affairs (the “Department”) to invest public 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. Market rate of return for the risk assumed; and
4. Conformance to all applicable state statutes governing the investment of public funds including the Department’s enabling legislation, Texas Government Code, Section 2306, Texas Government Code, Section 2263, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and specifically Texas Government Code, Section 2256, the Public Funds Investment Act (the “Act”).

It is further the policy of the Department to set forth in this document how all investments will be administered, providing for an all-inclusive document that will ensure consistency and thoroughness in the presentation of such investments as they affect the Department’s presentation of its financial statements.

II. SCOPE

This investment policy applies to all investments, including both direct investments and investments that are subject to trust indentures created and supplemented in connection with bonds issued by the Department. All of these investments are accounted for in the Department’s Comprehensive Annual Financial Report and include the General Fund, Special Revenue Fund, Trust and Agency Fund, and Enterprise Fund.

This investment policy does not apply to investments in instruments that constitute hedges, which include but are not limited to, interest rate swaps, caps, floors, futures contracts, forward contracts, etc., that satisfy the eligibility requirements of a “qualified hedge” as defined by Section 1.148-4(h)(2) of the Internal Revenue Code.

The Department has created and adopted a separate Interest Rate Swap Policy for guidance regarding the use and management of such hedges.

III. PRUDENCE

Investments shall be made with judgment and care under prevailing circumstances which persons of prudence, discretion and intelligence would exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety and liquidity of capital as well as the probable income to be derived.

The standard of prudence to be used by the investment officers named herein shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. An investment

officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

IV. INVESTMENT PRIORITIES

Investment by the Department will be in accordance with the following priorities in order of importance:

1. Understanding the suitability of the investment to the financial requirements of the Department. Suitability is the first priority in the Department's investment strategy, and will be evaluated on an overall basis and as a specific component of each of the remaining priorities.
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield (after taking into account the previous five priorities).

Such investment will be in accordance with all federal and state statutes, rules, and regulations.

V. STRATEGIES

The following are the primary strategies for investment activities in order of priority after taking into account the suitability of any investment:

1. Suitability. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of investment.
2. Preservation and Safety of Principal. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk. To achieve this objective, diversification is required so that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
 - A. Credit risk is the risk of loss due to the failure of the security issuer or backer, and may be mitigated by:
 - limiting investments to the safest types of securities;
 - pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with whom the Department will do business; and
 - diversifying the investment portfolio so that potential losses on individual securities will be minimized.
 - B. Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, and may be mitigated by:
 - structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and

- investing operating funds primarily in shorter-term securities.
3. Liquidity. The Department’s investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated cash flow needs. This is accomplished by structuring the portfolio so that securities mature concurrent with estimated or projected cash needs to meet anticipated demands. Since not all possible cash demands can be fully anticipated or projected with total accuracy, the portfolio should consist largely of securities with active secondary or resale markets, providing a reasonable level of flexibility to deal with unforeseen cash needs.
 4. Marketability. The Department will evaluate investment opportunities based on the marketability of each investment if the need arises to liquidate the investment before maturity. Specifically, the Department will take into consideration the activity level of the secondary market for the investment
 5. Diversification. The Department will maintain a diversified investment portfolio. Maturities will be staggered to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.
 6. Yield. The Department’s investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and cash flow needs of the Department. Return on investment for short-term operating funds is of less importance than the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:
 - A. A security experiencing or reasonably seen as being at risk of material decline in credit quality could be sold early to minimize the risk of loss of principal;
 - B. A security swap would improve the quality, yield, or target duration of the overall portfolio without creating other material risks or adverse features; or
 - C. Liquidity needs of the portfolio require that the security be sold and there are no preferable alternatives.

VI. DELEGATION OF AUTHORITY

The Board establishes the investment policy and objectives, obtains expert advice and assistance with respect to its actions as is necessary to exercise its responsibilities prudently, and monitors the actions of staff and advisors to ensure compliance with its policy. It is the Board’s intention that this policy be carried out by those persons who are qualified and competent in their area of expertise.

Authority to manage the Department’s investment program is granted under the provisions of Texas Government Code, Section 2306.052(b) (4) and (5) to the Director of the Department, (“Executive Director”). Responsibility for the operation of the investment program is hereby delegated by the Executive Director to the Director of Bond Finance and the Chief Financial Officer acting in those capacities (collectively the “Investment Officer”) who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Procedures should include reference to safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service contracts. Such procedures may include explicit delegation of authority to persons responsible for investment transactions. No person may engage

in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer.

VII. ETHICS AND CONFLICTS OF INTEREST

1. Department employees and Board members must comply with all applicable laws, and should specifically be aware of the following statutes:
 - A. Texas Government Code, Section 825.211, *Certain Interests in Loans, Investments or Contracts Prohibited*
 - B. Texas Government Code, Section 572.051, *Standards of Conduct for Public Servants*
 - C. Texas Government Code, Sections 553.001-003, *Disclosure by Public Servants of Interest in Property Being Acquired by Government*
 - D. Texas Government Code, Section 552.352, *Distribution of Confidential Information*
 - E. Texas Government Code, Section 572.054, *Representation by Former Officer or Employee of Regulatory Agency Restricted*
 - F. Texas Penal Code, Chapter 36, *Bribery, Corrupt Influence and Gifts to Public Servants*
 - G. Texas Penal Code, Chapter 39, *Abuse of Office, Official Misconduct*.

The omission of any applicable statute from this list does not excuse violation of its provisions.

2. Department employees and Board members must be honest in the exercise of their duties and must not take actions which will discredit the Department.
3. Department employees and Board members should be loyal to the interest of the Department to the extent that such loyalty is not in conflict with other duties which legally have priority, and should avoid personal, employment or business relationships that create conflicts of interest.
 - A. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.
 - B. Officers and employees shall disclose to the Executive Director any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the Department's investment portfolio.
 - C. Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department.
 - D. Department employees and Board members may not use their relationship with the Department to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of the Department as a reference or the communication to others of the fact that a relationship with the Department exists, provided that no misrepresentation is involved.
 - E. Department employees and Board members who have a personal business relationship with a business organization offering to engage in an investment transaction with the Department

shall file a statement disclosing that personal business interest. An individual who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Department shall file a statement disclosing that relationship. A statement required under this section must be filed with the Texas Ethics Commission and the Department's Board. For purposes of this policy, an individual has a personal business relationship with a business organization if:

- the individual owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
- funds received by the Investment Officer from the business organization exceed 10 percent of the individual's gross income from the previous year; or
- the individual has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the individual.

VIII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Department (in conjunction with the State Comptroller) will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness; these may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by state law.

The Department will use as its authorized list of broker/dealers and financial institutions any broker/dealer or financial institution that is authorized to do business with the State Comptroller. With respect to investments provided in connection with the issuance of bonds, the above requirements will be deemed met if the investment provider has the minimum credit ratings required by rating agencies and is acceptable to the bond insurer/credit enhancer, if applicable, and if the investment meets the requirements of the applicable bond trust indenture. A broker, engaged solely to secure a qualified investment referred to in this paragraph on behalf of the Department, which will not be providing an investment instrument shall not be subject to the above requirements, and may only be engaged if approved by the Board.

IX. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

During the 78th Legislature, Regular Session, the Texas Legislature passed *Chapter 2263, Ethics And Disclosure Requirements For Outside Financial Advisors And Service Providers* ("Chapter 2263"). Chapter 2263, under Senate Bill 1059, requires certain actions by governing boards of state entities involved in the management and investment of state funds and adds disclosure requirements for outside financial advisors and service providers. Chapter 2263 became effective September 1, 2003. Each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, must have adopted its initial rules in time for the rules to take effect not later than January 1, 2004.

Applicability. Chapter 2263 applies in connection with the management or investment of any state funds managed or invested:

1. under the Texas Constitution or other law, including Chapter 404, State Treasury Operations of Comptroller, and Chapter 2256, Public Funds Investment; and
2. by or for:

- A. a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;
- B. an institution of higher education as defined by Section 61.003, Education Code; or
- C. another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

Chapter 2263 applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

Chapter 2263 does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Definition. With respect to this Chapter 2263, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Construction With Other Law. To the extent of a conflict between Chapter 2263 and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Ethics Requirements For Outside Financial Advisors Or Service Providers. The governing body of a state governmental entity by rule shall adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

1. may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year; or
2. render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described immediately above, in regard to compensation or duties, is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

In addition to the disclosures required by Chapter 2263 and described below, the Department will rely upon financial advisors and service providers' submission of an Acknowledgement of Receipt of Investment Policy and Certificate of Compliance with the Public Funds Investment Act forms to evidence compliance with the Department's code of conduct and procedures as related to investments.

Disclosure Requirements For Outside Financial Advisor Or Service Provider. A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

1. any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and

2. all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

The financial advisor or service provider shall disclose a relationship described by the immediately preceding subsections (1) or (2) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe. The Department's disclosure form is provided as Attachment "D".

The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report related to the immediately preceding subsections (1) or (2).

Public Information. Chapter 552, Government Code, controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or is excepted from required public disclosure.

X. AUTHORIZED AND SUITABLE INVESTMENTS

Trust Indenture Funds for which the Department has control of the investment decisions, all of which are held by Treasury Safekeeping for the benefit of bondholders, will be subject to the authorized investments set-forth in the applicable Indenture of Trust and any applicable supplemental indenture(s).

General, Special Revenue and Trust and Agency Funds, all of which are on deposit with the State Treasury (specifically excluding Enterprise Funds), are invested by the Treasury pursuant to Texas Government Code, Section 404.024 and Article 5221(f), Subsection 13A(d) as amended relating to Manufactured Housing.

Enterprise Fund

1. Subject to a resolution authorizing issuance of its bonds, the Department is empowered by Texas Government Code, Section 2306.173 to invest its money in bonds, obligations or other securities; or place its money in demand or time deposits, whether or not evidenced by certificates of deposit. A guaranteed investment contract is an authorized investment for bond proceeds. All bond proceeds and revenues subject to the pledge of an Indenture shall be invested in accordance with the applicable law and the provisions of the applicable indenture including "Investment Securities" as listed in such Indenture and so defined.

2. All other enterprise funds shall be invested pursuant to state law. The following are permitted investments for those funds pursuant to the Act:

A. Obligations of, or guaranteed by governmental entities:

- Obligations of the United States or its agencies and instrumentalities.
- Direct obligations of this state or its agencies and instrumentalities.
- Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, that have a market value of not less than the principal amount of the certificates and which has a maturity that does not exceed 10 years.
- Other obligations the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities.
- Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.

B. A Certificate of Deposit is an authorized investment under this policy if the certificate of deposit is issued by a depository institution that has its main office or a branch office in this state and is:

- guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor;
- secured by obligations that are described in subsection 2A above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates and secured by collateral as described in Section XII of this policy; and
- secured in any other manner and amount provided by law for deposits of the Department.

In addition to the authority to invest funds in certificates of deposit noted above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this policy:

- the funds are invested by an investing entity through a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
- the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States;
- the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity acts as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity; and
- at the same time that the funds are deposited and the certificates of deposit are issued for the account of the investing entity, the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the

funds invested by the investing entity through the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor.

C. A “repurchase agreement” is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations of the United States or its agencies and instrumentalities at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. The Department will comply with the Policy Statements and Recommended Practices for Repurchase Agreements as outlined in Attachment B. A fully collateralized repurchase agreement is an authorized investment under this policy if the repurchase agreement:

- has a defined termination date;
- is secured by collateral described in Section XV of this policy;
- requires the securities being purchased by the Department to be pledged to the Department, held in the Department’s name, and deposited at the time the investment is made with the Department or with a third party selected and approved by the Department;
- is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state; and
- in the case of a reverse repurchase agreement, notwithstanding any other law other than the Act, the term of any such reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. In addition, money received by the Department under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

D. Commercial Paper is an authorized investment under this policy if the commercial paper:

- has a stated maturity of 270 days or fewer from the date of its issuance; and
- is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally-recognized credit rating agencies, or one nationally-recognized credit rating agency and is fully secured, and by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

3. The following are not authorized investments pursuant to the Act:

- A. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- B. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- C. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- D. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

XI. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

1. The maturity date of the investment – longer maturity dates will require more diversification; and
2. The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XII. PERFORMANCE STANDARDS

The investment portfolio shall be designed and managed with the objective of preserving principal and obtaining a rate of return throughout budgetary and economic cycles commensurate with the investment risk constraints and the cash flow needs. The basis used to determine whether market yields are being achieved shall be the three-month U.S. Treasury bill.

XIII. EFFECT OF LOSS OF REQUIRED RATING

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not meet or exceed the minimum rating. The Department shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not meet or exceed the minimum rating. Still further, the Investment Officer is required to review monthly all investments subject to this policy to ensure that there have been no rating changes which would render such investment in violation of this policy.

XIV. MAXIMUM MATURITIES

To the extent possible, the Department will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Department will not directly invest in securities maturing more than five years from the date of purchase. The Department will periodically determine what the appropriate average weighted maturity of the portfolio should be based on anticipated cash flow requirements.

General funds dedicated to the support of single family programs may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds.

In addition, funds may be invested in any investments that are being sold from a bond indenture or are the result of the operation of the Department's single family program so long as:

1. such investment furthers the goals of that program;
2. the Investment Officer receives Board approval prior to undertaking such investment.

XV. COLLATERALIZATION

Collateralization will be required on certificates of deposit, repurchase and reverse repurchase agreements, and savings and demand deposits if not insured by FDIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level should be at least 101% of the market value of principal and accrued interest for repurchase and reverse repurchase agreements. Collateralization of 100% will be required for overnight repurchase agreements and bank deposits in excess of FDIC insurance.

The following obligations may be used as collateral under this policy:

1. obligations of the United States or its agencies and instrumentalities;

2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities; and
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally-recognized investment rating firm not less than A or its equivalent.

Collateral will always be held by an independent third party with whom the Department has a current custodial agreement. A clearly marked evidence of ownership or a safekeeping receipt must be supplied to the Department and retained. The right of collateral substitution is granted subject to prior approval by the Investment Officer.

XVI. SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the Department will be executed by Delivery vs. Payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third-party custodian as evidenced by safekeeping receipts.

XVII. INTERNAL CONTROL

The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that:

1. the cost of a control should not exceed the benefits likely to be derived; and
2. the valuation of costs and benefits requires estimates and judgments by management.

Once every two years, the Department, in conjunction with its annual financial audit, shall have external/internal auditors perform a compliance audit of management controls on investments and adherence to the Department's established investment policies. The internal controls shall address the following points:

1. Control of collusion. Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. Separation of transaction authority from accounting and record keeping. By separating the person who authorizes or performs the transaction from the person who records or otherwise accounts for the transaction, a separation of duties is achieved.
3. Custodial safekeeping. Securities purchased from any bank or dealer including appropriate collateral as defined by state law shall be placed with an independent third party for custodial safekeeping.

4. Avoidance of physical delivery securities. Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. Clear delegation of authority to subordinate staff members. Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. Written confirmation or telephone transactions for investments and wire transfers. Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions must be supported by written communications and approved by the appropriate person, as defined by investment internal control procedures. Written communications may be via fax if on letterhead and the safekeeping institution has a list of authorized signatures.
7. Development of a wire transfer agreement with the lead bank or third party custodian. This agreement should outline the various controls, security provisions, and delineate responsibilities of each party making and receiving wire transfers.

The Department's external/internal auditors shall report the results of the audit performed under this section to the Office of the State Auditor not later than January 1 of each even-numbered year. The Office of the State Auditor compiles the results of reports received under this subsection and reports those results to the legislative audit committee once every two years.

XVIII. REPORTING

1. Methods. Not less than quarterly, the Investment Officer shall prepare and submit to the Executive Director and the Board of the Department a written report of investment transactions for all funds covered by this policy for the preceding reporting period; including a summary that provides a clear picture of the status of the current investment portfolio and transactions made over the previous reporting period. This report will be prepared in a manner which will allow the Department and the Board to ascertain whether investment activities during the reporting period have conformed to the investment policy. While not required under the Act, this report will provide information regarding investments held under bond trust indentures as well as investments covered under the Act. The report must:
 - A. describe in detail the investment position of the Department on the date of the report;
 - B. be prepared jointly by each Investment Officer of the Department;
 - C. be signed by each Investment Officer of the Department;
 - D. contain a summary statement, prepared in compliance with generally accepted accounting principles for each fund that states the:
 - book value and market value of each separately invested asset at the beginning and end of the reporting period; and
 - fully accrued interest for the reporting period;
 - E. state the maturity date of each separately invested asset that has a maturity date;
 - F. state the fund in the Department for which each individual investment was acquired; and

- G. state the compliance of the investment portfolio of the Department as it relates to the investment strategy expressed in the Department's investment policy and relevant provisions of the policy.

The reports prepared by the Investment Officer under this policy shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by that auditor.

2. Performance Standards. The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. Portfolio performance will be compared to appropriate benchmarks on a regular basis.
3. Marking to Market. A statement of the market value of the portfolio shall be issued at least quarterly. The Investment Officer will obtain market values from recognized published sources or from other qualified professionals as necessary. This will ensure that a review has been performed on the investment portfolio in terms of value and subsequent price volatility.

XIX. AUTHORIZED LIST OF BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Not less than annually, the Investment Officer shall prepare and submit to the Director and the Board of the Department a written report outlining the list of authorized broker/dealers and financial institutions maintained by the State Comptroller. The current list is provided in Attachment E.

XX. INVESTMENT POLICY ADOPTION

The Department's investment policy shall be adopted by resolution of the Board.

1. Exemptions. Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.
2. Amendment. The policy shall be reviewed at least annually by the Board and any amendments made thereto must be approved by the Board. The Board shall adopt by written resolution a statement that it has reviewed the investment policies and strategies.

XXI. ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction related to Department funds. The qualified representative of the business organization shall execute a written instrument in a form acceptable to the Department and the business organization, substantially to the effect that the offering business organization has:

1. received and reviewed the investment policy of the Department; and
2. acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Department and the business organization that are not authorized by the Department's investment policy, except to the

extent that this authorization is dependent on an analysis of the makeup of the Department's entire portfolio or requires an interpretation of subjective investment standards.

The Investment Officer of the Department may not buy any securities from a person who has not delivered to the Department an instrument complying with this investment policy. (See sample documents in Attachment "C".)

XXII. TRAINING

Each member of the Department's Board and the Investment Officer who are in office on September 1, 1996 or who assume such duties after September 1, 1996, shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties. Training under this section is provided by the Texas Higher Education Coordinating Board and must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this policy. The Investment Officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the Department's Board. The Investment Officer shall prepare a report on the training and deliver the report to the Board not later than the 180th day after the last day of each regular session of the legislature.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment A

STRATEGY

SECTION 1

All of the Department's funds as listed below are program / operational in nature, excluding the bond funds which are listed separately in Section 2 below. The following funds are held in the State Treasury and the Department earns interest on those balances at the then applicable rate.

- General Fund
- Trust Funds
- Agency Funds
- Proprietary Funds (excluding Revenue Bond Funds)

SECTION 2

The Department's Revenue Bond Funds, including proceeds, are invested in various investments as stipulated by the controlling bond indenture. Certain investments, controlled by indentures prior to the latest revised Public Funds Investment Act, are properly grandfathered from its provisions. Typical investments include: guaranteed investment contracts; agency mortgage-backed securities resulting from the program's loan origination; in some cases, long-term Treasury notes; and bonds used as reserves with maturities that coincide with certain long-term bond maturities.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment B

POLICY STATEMENTS AND RECOMMENDED PRACTICE

Repurchase Agreements

1. Repurchase agreements (“repos”) are the sale by a bank or dealer of government securities with the simultaneous agreement to repurchase the securities on a later date. Repos are commonly used by public entities to secure money market rates of interest.
2. The Department affirms that repurchase agreements are an integral part of its investment program.
3. The Department and its designated Investment Officer should exercise special caution in selecting parties with whom they will conduct repurchase transactions, and be able to identify the parties acting as principals to the transaction.
4. Proper collateralization practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser’s custodian. Over-collateralization, commonly called haircut, or marking-to-market practices should be mandatory procedures.
5. To protect public funds the Department should work with securities dealers, banks, and their respective associations to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers’ interests, universal standards for delivery procedures, and written risk disclosures.
6. Master repurchase agreements should generally be used subject to appropriate legal and technical review. If the prototype agreement developed by the Public Securities Association is used, appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law should be included.
7. Despite contractual agreements to the contrary, receivers, bankruptcy courts and federal agencies have interfered with the liquidation of repurchase agreement collateral. Therefore, the Department should encourage Congress to eliminate statutory and regulatory obstacles to perfected security interests and liquidation of repurchase collateral in the event of default.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment C

ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

- 1. I am a qualified representative of _____ (the “Business Organization”).
- 2. The Business Organization proposes to engage in an investment transaction (the “Investments”) with the Texas Department of Housing and Community Affairs (the “Department”).
- 3. I acknowledge that I have received and reviewed the Department’s investment policy.
- 4. I acknowledge that the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the Department that are not authorized by the Department’s investment policy.
- 5. The Business Organization makes no representation regarding authorization of the Investments to the extent such authorization is dependent on an analysis of the Department’s entire portfolio and which requires an interpretation of subjective investment standards.

Dated this _____ day of _____, _____.

Name: _____

Title: _____

Business Organization: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment D

Annual Disclosure Statement for Financial Advisors and Service Providers

that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?

Yes _____ No _____

If yes, please explain in detail. (Attach additional sheets as needed.)

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature _____ Date _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment E



COMPTROLLER OF PUBLIC ACCOUNTS
Broker Dealer List
June, 2015

Amherst Pierpoint Securities LLC*

Barclay's Capital Inc.
Blaylock Beal Van LLC
BMO Capital Markets Corp.
BNP Paribas Securities Corp.
BNY Mellon Capital Markets, LLC
BOSC, Inc.
Cantor Fitzgerald & Co.
Capital Institutional Services, Inc.
Citigroup Global Markets Inc.
Coastal Securities Inc.
Credit Suisse (USA), LLC
D.A. Davidson & Co.
Daiwa Capital Markets America, Inc.
Deutsche Bank Securities, Inc.
Drexel Hamilton LLC
The Fig Group, LLC **(H)**
First Southwest Company, LLC
Frost Bank Capital Markets
FTN Financial Securities Corp.
Goldman Sachs & Co.
HSBC Securities (USA), Inc.
Jefferies, LLC
J.P. Morgan Securities LLC
KCG Americas LLC
Lloyd's Securities Inc.*
Loop Capital Markets, Inc.
Merrill Lynch Pierce Fenner & Smith
Mesirow Financial Inc.

Mischler Financial Group, Inc.
Mitsubishi UFJ Securities (USA)
Mizuho Securities USA Inc.
Morgan Stanley Smith Barney LLC
MFR Securities, Inc.
National Alliance Capital Markets
Nomura Securities International Inc.
Piper Jaffray & Co.
Raymond James & Associates Inc.
RBC Capital Markets, LLC
RBS Securities Inc.
Rice Securities, LLC
Robert W. Baird & Co., Inc.
Samuel Ramirez & Company **(H)**
Scotia Capital (USA) Inc.
Signature Securities Group Corp.
S.G. Americas Securities LLC
Stifel, Nicholas & Company Inc.
SunTrust Robinson Humphrey Inc.
T.D. Securities (USA) LLC
UBS Securities LLC
UMBFSI* (United Missouri Bank)
Vining Sparks IGB, LP
Wells Fargo Securities, LLC
Williams Capital Group, LP
Zions First National Bank

(H)--Historically Underutilized Business

***Added June, 2015**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

As presented to the Board for adoption on April ~~28~~16, 201~~6~~5

201~~6~~5

April ~~28~~16, 201~~6~~5

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

INVESTMENT POLICY

I. POLICY

It is the policy of the Texas Department of Housing and Community Affairs (the "Department") to invest public 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. Market rate of return for the risk assumed; and
4. Conformance to all applicable state statutes governing the investment of public funds including the Department's enabling legislation, Texas Government Code, Section 2306, Texas Government Code, Section 2263, Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers, and specifically Texas Government Code, Section 2256, the Public Funds Investment Act (the "Act").

It is further the policy of the Department to set forth in this document how all investments will be administered, providing for an all-inclusive document that will ensure consistency and thoroughness in the presentation of such investments as they affect the Department's presentation of its financial statements.

II. SCOPE

This investment policy applies to all investments, including both direct investments and investments that are subject to trust indentures created and supplemented in connection with bonds issued by the Department. All of these investments are accounted for in the Department's Comprehensive Annual Financial Report and include the General Fund, Special Revenue Fund, Trust and Agency Fund, and Enterprise Fund.

This investment policy does not apply to investments in instruments that constitute hedges, which include but are not limited to, interest rate swaps, caps, floors, futures contracts, forward contracts, etc., that satisfy the eligibility requirements of a "qualified hedge" as defined by Section 1.148-4(h)(2) of the Internal Revenue Code.

The Department has created and adopted a separate Interest Rate Swap Policy for guidance regarding the use and management of such hedges.

III. PRUDENCE

Investments shall be made with judgment and care under prevailing circumstances which persons of prudence, discretion and intelligence would exercise in the management of their own affairs; not for speculation, but for investment, considering the probable safety and liquidity of capital as well as the probable income to be derived.

The standard of prudence to be used by the investment officers named herein shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. An investment officer acting in accordance with the investment policy and written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

IV. INVESTMENT PRIORITIES

Investment by the Department will be in accordance with the following priorities in order of importance:

1. Understanding the suitability of the investment to the financial requirements of the Department. Suitability is the first priority in the Department’s investment strategy, and will be evaluated on an overall basis and as a specific component of each of the remaining priorities.
2. Preservation and safety of principal;
3. Liquidity;
4. Marketability of the investment if the need arises to liquidate the investment before maturity;
5. Diversification of the investment portfolio; and
6. Yield (after taking into account the previous five priorities).

Such investment will be in accordance with all federal and state statutes, rules, and regulations.

V. STRATEGIES

The following are the primary strategies for investment activities in order of priority after taking into account the suitability of any investment:

1. Suitability. In accordance with Section 2256.005(d) of the Act, the first priority is the suitability of investment.
2. Preservation and Safety of Principal. Investments of the Department shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk. To achieve this objective, diversification is required so that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
 - A. Credit risk is the risk of loss due to the failure of the security issuer or backer, and may be mitigated by:
 - limiting investments to the safest types of securities;
 - pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisors with whom the Department will do business; and
 - diversifying the investment portfolio so that potential losses on individual securities will be minimized.

- B. Interest rate risk is the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, and may be mitigated by:
- structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity, and
 - investing operating funds primarily in shorter-term securities.
3. Liquidity. The Department's investment portfolio shall remain sufficiently liquid to meet all reasonably anticipated cash flow needs. This is accomplished by structuring the portfolio so that securities mature concurrent with estimated or projected cash needs to meet anticipated demands. Since not all possible cash demands can be fully anticipated or projected with total accuracy, the portfolio should consist largely of securities with active secondary or resale markets, providing a reasonable level of flexibility to deal with unforeseen cash needs.
4. Marketability. The Department will evaluate investment opportunities based on the marketability of each investment if the need arises to liquidate the investment before maturity. Specifically, the Department will take into consideration the activity level of the secondary market for the investment
5. Diversification. The Department will maintain a diversified investment portfolio. Maturities will be staggered to provide cash flows based on anticipated needs. Investment risks will be reduced through diversification among authorized investments.
6. Yield. The Department's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and cash flow needs of the Department. Return on investment for short-term operating funds is of less importance ~~compared to~~ than the safety and liquidity objectives described above. The core of investments is limited to relatively low-risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:
- A. A security experiencing or reasonably seen as being at risk of material decline in credit quality could be sold early to minimize the risk of loss of principal;
 - B. A security swap would improve the quality, yield, or target duration of ~~the~~ overall portfolio without creating other material risks or adverse features; or
 - C. Liquidity needs of the portfolio require that the security be sold and there are no preferable alternatives.

VI. DELEGATION OF AUTHORITY

The Board establishes the investment policy and objectives, obtains expert advice and assistance with respect to its actions as is necessary to exercise its responsibilities prudently, and monitors the actions of staff and advisors to ensure compliance with its policy. It is the Board's intention that this policy be carried out by those persons who are qualified and competent in their area of expertise.

Authority to manage the Department's investment program is granted under the provisions of Texas Government Code, Section 2306.052(b) (4) and (5) to the Director of the Department, ("Executive

Director”). Responsibility for the operation of the investment program is hereby delegated by the Executive Director to the Director of Bond Finance and the Chief Financial Officer acting in those capacities (collectively the “Investment Officer”) who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials. Procedures should include reference to safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, collateral/depository agreements and banking service contracts. Such procedures may include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer.

VII. ETHICS AND CONFLICTS OF INTEREST

1. Department employees and Board members must comply with all applicable laws, and should specifically be aware of the following statutes:
 - A. Texas Government Code, Section 825.211, *Certain Interests in Loans, Investments or Contracts Prohibited*
 - B. Texas Government Code, Section 572.051, *Standards of Conduct for Public Servants*
 - C. Texas Government Code, Sections 553.001-003, *Disclosure by Public Servants of Interest in Property Being Acquired by Government*
 - D. Texas Government Code, Section 552.352, *Distribution of Confidential Information*
 - E. Texas Government Code, Section 572.054, *Representation by Former Officer or Employee of Regulatory Agency Restricted*
 - F. Texas Penal Code, Chapter 36, *Bribery, Corrupt Influence and Gifts to Public Servants*
 - G. Texas Penal Code, Chapter 39, *Abuse of Office, Official Misconduct.*

The omission of any applicable statute from this list does not excuse violation of its provisions.

2. Department employees and Board members must be honest in the exercise of their duties and must not take actions which will discredit the Department.
3. Department employees and Board members should be loyal to the interest of the Department to the extent that such loyalty is not in conflict with other duties which legally have priority, and should avoid personal, employment or business relationships that create conflicts of interest.
 - A. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions.
 - B. Officers and employees shall disclose to the Executive Director any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the Department’s investment portfolio.

- C. Officers and employees shall refrain from undertaking personal investment transactions with the same individuals with whom business is conducted on behalf of the Department.
- D. Department employees and Board members may not use their relationship with the Department to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of the Department as a reference or the communication to others of the fact that a relationship with the Department exists, provided that no misrepresentation is involved.
- E. Department employees and Board members who have a personal business relationship with a business organization offering to engage in an investment transaction with the Department shall file a statement disclosing that personal business interest. An individual who is related within the second degree by affinity or consanguinity to an individual seeking to sell an investment to the Department shall file a statement disclosing that relationship. A statement required under this section must be filed with the Texas Ethics Commission and the Department's Board. For purposes of this policy, an individual has a personal business relationship with a business organization if:
- the individual owns 10 percent or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization;
 - funds received by the Investment Officer from the business organization exceed 10 percent of the individual's gross income from the previous year; or
 - the individual has acquired from the business organization during the previous year investments with a book value of \$2,500 or more for the personal account of the individual.

VIII. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Department (in conjunction with the State Comptroller) will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness; these may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule). No public deposit shall be made except in a qualified public depository as established by state law.

The Department will use as its authorized list of broker/dealers and financial institutions any broker/dealer or financial institution that is authorized to do business with the State Comptroller. With respect to investments provided in connection with the issuance of bonds, the above requirements will be deemed met if the investment provider has the minimum credit ratings required by rating agencies and is acceptable to the bond insurer/credit enhancer, if applicable, and if the investment meets the requirements of the applicable bond trust indenture. A broker, engaged solely to secure a qualified investment referred to in this paragraph on behalf of the Department, which will not be providing an investment instrument shall not be subject to the above requirements, and may only be engaged if approved by the Board.

IX. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

During the 78th Legislature, Regular Session, the Texas Legislature passed *Chapter 2263, Ethics And Disclosure Requirements For Outside Financial Advisors And Service Providers* ("Chapter 2263"). Chapter 2263, under Senate Bill 1059, requires certain actions by governing boards of state entities involved in the management and investment of state funds and adds disclosure requirements for outside financial advisors and service providers. Chapter 2263 became effective September 1, 2003. Each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, must have adopted its initial rules in time for the rules to take effect not later than January 1, 2004.

Applicability. Chapter 2263 applies in connection with the management or investment of any state funds managed or invested:

1. under the Texas Constitution or other law, including Chapter 404, State Treasury Operations of Comptroller, and Chapter 2256, Public Funds Investment; and
2. by or for:
 - A. a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;
 - B. an institution of higher education as defined by Section 61.003, Education Code; or
 - C. another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

Chapter 2263 applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

Chapter 2263 does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Definition. With respect to this Chapter 2263, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Construction With Other Law. To the extent of a conflict between Chapter 2263 and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Ethics Requirements For Outside Financial Advisors Or Service Providers. The governing body of a state governmental entity by rule shall adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

1. may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year; or
2. render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described immediately above, in regard to compensation or duties, is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

In addition to the disclosures required by Chapter 2263 and described below, the Department will rely upon financial advisors and service providers' submission of an Acknowledgement of Receipt of Investment Policy and Certificate of Compliance with the Public Funds Investment Act forms to evidence compliance with the Department's code of conduct and procedures as related to investments.

Disclosure Requirements For Outside Financial Advisor Or Service Provider. A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

1. any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and
2. all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

The financial advisor or service provider shall disclose a relationship described by the immediately preceding subsections (1) or (2) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe. The Department's disclosure form is provided as Attachment "D".

The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report related to the immediately preceding subsections (1) or (2).

Public Information. Chapter 552, Government Code, controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or is excepted from required public disclosure.

X. AUTHORIZED AND SUITABLE INVESTMENTS

Trust Indenture Funds for which the Department has control of the investment decisions, all of which are held by Treasury Safekeeping for the benefit of bondholders, will be subject to the authorized investments set-forth in the applicable Indenture of Trust and any applicable supplemental indenture(s).

General, Special Revenue and Trust and Agency Funds, all of which are on deposit with the State Treasury (specifically excluding Enterprise Funds), are invested by the Treasury pursuant to Texas Government Code, Section 404.024 and Article 5221(f), Subsection 13A(d) as amended relating to Manufactured Housing.

Enterprise Fund

1. Subject to a resolution authorizing issuance of its bonds, the Department is empowered by Texas Government Code, Section 2306.173 to invest its money in bonds, obligations or other securities: or place its money in demand or time deposits, whether or not evidenced by certificates of deposit. A guaranteed investment contract is an authorized investment for bond proceeds. All bond proceeds and revenues subject to the pledge of an Indenture shall be invested in accordance with the applicable law and the provisions of the applicable indenture including “Investment Securities” as listed in such Indenture and so defined.
2. All other enterprise funds shall be invested pursuant to state law. The following are permitted investments for those funds pursuant to the Act:
 - A. Obligations of, or guaranteed by governmental entities:
 - Obligations of the United States or its agencies and instrumentalities.
 - Direct obligations of this state or its agencies and instrumentalities.
 - Collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, that have a market value of not less than the principal amount of the certificates and which has a maturity that does not exceed 10 years.
 - Other obligations the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities.
 - Obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally recognized investment rating firm not less than A or its equivalent.
 - B. A Certificate of Deposit is an authorized investment under this policy if the certificate of deposit is issued by a depository institution that has its main office or a branch office in this state and is:
 - guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor;
 - secured by obligations that are described in subsection 2A above, including mortgage backed securities directly issued by a federal agency or instrumentality that have a market value of not less than the principal amount of the certificates and secured by collateral as described in Section XII of this policy; and
 - secured in any other manner and amount provided by law for deposits of the Department.

In addition to the authority to invest funds in certificates of deposit noted above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under this policy:

- the funds are invested by an investing entity through a depository institution that has its main office or a branch office in this state and that is selected by the investing entity;
 - the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located, for the account of the investing entity;
 - the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States;
 - the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity acts as custodian for the investing entity with respect to the certificates of deposit issued for the account of the investing entity; and
 - at the same time that the funds are deposited and the certificates of deposit are issued for the account of the investing entity, the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor as selected by the investing entity receives an amount of deposits from customers of other federally insured depository institutions, wherever located, that is equal to or greater than the amount of the funds invested by the investing entity through the depository institution guaranteed or insured by the Federal Deposit Insurance Department (FDIC) or its successor.
- C. A “repurchase agreement” is a simultaneous agreement to buy, hold for a specified time, and sell back at a future date obligations of the United States or its agencies and instrumentalities at a market value at the time the funds are disbursed of not less than the principal amount of the funds disbursed. The term includes a direct security repurchase agreement and a reverse security repurchase agreement. The Department will comply with the Policy Statements and Recommended Practices for Repurchase Agreements as outlined in Attachment B. A fully collateralized repurchase agreement is an authorized investment under this policy if the repurchase agreement:
- has a defined termination date;
 - is secured by collateral described in Section XV of this policy;
 - requires the securities being purchased by the Department to be pledged to the Department, held in the Department’s name, and deposited at the time the investment is made with the Department or with a third party selected and approved by the Department;
 - is placed through a primary government securities dealer, as defined by the Federal Reserve, or a financial institution doing business in this state; and
 - in the case of a reverse repurchase agreement, notwithstanding any other law other than the Act, the term of any such reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. In addition, money received by the Department under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

D. Commercial Paper is an authorized investment under this policy if the commercial paper:

- has a stated maturity of 270 days or fewer from the date of its issuance; and
- is rated not less than A-1 or P-1 or an equivalent rating by at least two nationally-recognized credit rating agencies, or one nationally-recognized credit rating agency and is fully secured, and by an irrevocable letter of credit issued by a bank organized and existing under the laws of the United States or any state.

3. The following are not authorized investments pursuant to the Act:

- A. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;
- B. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;
- C. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and
- D. Collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

XI. DIVERSIFICATION

The Department will diversify its investments by security type and institution. The amount of required diversification will be determined based upon:

1. The maturity date of the investment – longer maturity dates will require more diversification; and
2. The rating of the underlying investment – lower rated investments will require a greater degree of diversification.

XII. PERFORMANCE STANDARDS

The investment portfolio shall be designed and managed with the objective of preserving principal and obtaining a rate of return throughout budgetary and economic cycles commensurate with the investment risk constraints and the cash flow needs. The basis used to determine whether market yields are being achieved shall be the three-month U.S. Treasury bill.

XIII. EFFECT OF LOSS OF REQUIRED RATING

An investment that requires a minimum rating under this subchapter does not qualify as an authorized investment during the period the investment does not meet or exceed the minimum rating. The Department shall take all prudent measures that are consistent with its investment policy to liquidate an investment that does not meet or exceed the minimum rating. Still further, the Investment Officer is required to review monthly all investments subject to this policy to ensure that there have been no rating changes which would render such investment in violation of this policy.

XIV. MAXIMUM MATURITIES

To the extent possible, the Department will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the Department will not directly invest in securities maturing more than five years from the date of purchase. The Department will periodically determine what the appropriate average weighted maturity of the portfolio should be based on anticipated cash flow requirements.

General funds dedicated to the support of single family programs may be invested in securities exceeding five years if the maturities of such investments are made to coincide as nearly as practicable with the expected use of funds.

In addition, funds may be invested in any investments that are being sold from a bond indenture or are the result of the operation of the Department's single family program so long as:

1. such investment furthers the goals of that program;
2. the Investment Officer receives Board approval prior to undertaking such investment.

XV. COLLATERALIZATION

Collateralization will be required on certificates of deposit, repurchase and reverse repurchase agreements, and savings and demand deposits if not insured by FDIC. In order to anticipate market changes and provide a level of security for all funds, the collateralization level should be at least 101% of the market value of principal and accrued interest for repurchase and reverse repurchase agreements. Collateralization of 100% will be required for overnight repurchase agreements and bank deposits in excess of FDIC insurance.

The following obligations may be used as collateral under this policy:

1. obligations of the United States or its agencies and instrumentalities;
2. direct obligations of this state or its agencies and instrumentalities;
3. collateralized mortgage obligations directly issued by a federal agency or instrumentality of the United States, the underlying security for which is guaranteed by an agency or instrumentality of the United States;
4. other obligations, the principal and interest of which are unconditionally guaranteed or insured by or backed by the full faith and credit of this state or the United States or their respective agencies and instrumentalities; and
5. obligations of states, agencies, counties, cities, and other political subdivisions of any state rated as to investment quality by a nationally-recognized investment rating firm not less than A or its equivalent.

Collateral will always be held by an independent third party with whom the Department has a current custodial agreement. A clearly marked evidence of ownership or a safekeeping receipt must be supplied to the Department and retained. The right of collateral substitution is granted subject to prior approval by the Investment Officer.

XVI. SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the Department will be executed by Delivery vs. Payment (DVP). This ensures that securities are deposited in the eligible financial institution prior to the release of funds. Securities will be held by a third-party custodian as evidenced by safekeeping receipts.

XVII. INTERNAL CONTROL

The Investment Officer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the entity are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that:

1. the cost of a control should not exceed the benefits likely to be derived; and
2. the valuation of costs and benefits requires estimates and judgments by management.

Once every two years, the Department, in conjunction with its annual financial audit, shall have external/internal auditors perform a compliance audit of management controls on investments and adherence to the Department's established investment policies. The internal controls shall address the following points:

1. Control of collusion. Collusion is a situation where two or more employees are working in conjunction to defraud their employer.
2. Separation of transaction authority from accounting and record keeping. By separating the person who authorizes or performs the transaction from the person who records or otherwise accounts for the transaction, a separation of duties is achieved.
3. Custodial safekeeping. Securities purchased from any bank or dealer including appropriate collateral as defined by state law shall be placed with an independent third party for custodial safekeeping.
4. Avoidance of physical delivery securities. Book entry securities are much easier to transfer and account for since actual delivery of a document never takes place. Delivered securities must be properly safeguarded against loss or destruction. The potential for fraud and loss increases with physically delivered securities.
5. Clear delegation of authority to subordinate staff members. Subordinate staff members must have a clear understanding of their authority and responsibilities to avoid improper actions. Clear delegation of authority also preserves the internal control structure that is contingent on the various staff positions and their respective responsibilities.
6. Written confirmation or telephone transactions for investments and wire transfers. Due to the potential for error and improprieties arising from telephone transactions, all telephone transactions must be supported by written communications and approved by the appropriate person, as defined by investment internal control procedures. Written communications may be via fax if on letterhead and the safekeeping institution has a list of authorized signatures.

7. Development of a wire transfer agreement with the lead bank or third party custodian. This agreement should outline the various controls, security provisions, and delineate responsibilities of each party making and receiving wire transfers.

The Department's external/internal auditors shall report the results of the audit performed under this section to the Office of the State Auditor not later than January 1 of each even-numbered year. The Office of the State Auditor compiles the results of reports received under this subsection and reports those results to the legislative audit committee once every two years.

XVIII. REPORTING

1. **Methods.** Not less than quarterly, the Investment Officer shall prepare and submit to the Executive Director and the Board of the Department a written report of investment transactions for all funds covered by this policy for the preceding reporting period; including a summary that provides a clear picture of the status of the current investment portfolio and transactions made over the previous reporting period. This report will be prepared in a manner which will allow the Department and the Board to ascertain whether investment activities during the reporting period have conformed to the investment policy. While not required under the Act, this report will provide information regarding investments held under bond trust indentures as well as investments covered under the Act. The report must:
 - A. describe in detail the investment position of the Department on the date of the report;
 - B. be prepared jointly by each Investment Officer of the Department;
 - C. be signed by each Investment Officer of the Department;
 - D. contain a summary statement, prepared in compliance with generally accepted accounting principles for each fund that states the:
 - book value and market value of each separately invested asset at the beginning and end of the reporting period; and
 - fully accrued interest for the reporting period;
 - E. state the maturity date of each separately invested asset that has a maturity date;
 - F. state the fund in the Department for which each individual investment was acquired; and
 - G. state the compliance of the investment portfolio of the Department as it relates to the investment strategy expressed in the Department's investment policy and relevant provisions of the policy.

The reports prepared by the Investment Officer under this policy shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the Board by that auditor.

2. **Performance Standards.** The investment portfolio will be managed in accordance with the parameters specified within this policy. The portfolio should obtain a market average rate of return during a market/economic environment of stable interest rates. Portfolio performance will be compared to appropriate benchmarks on a regular basis.
3. **Marking to Market.** A statement of the market value of the portfolio shall be issued at least quarterly. The Investment Officer will obtain market values from recognized published sources

or from other qualified professionals as necessary. This will ensure that a review has been performed on the investment portfolio in terms of value and subsequent price volatility.

XIX. AUTHORIZED LIST OF BROKER/DEALERS AND FINANCIAL INSTITUTIONS

Not less than annually, the Investment Officer shall prepare and submit to the Director and the Board of the Department a written report outlining the list of authorized broker/dealers and financial institutions maintained by the State Comptroller. The current list is provided in Attachment E.

XX. INVESTMENT POLICY ADOPTION

The Department's investment policy shall be adopted by resolution of the Board.

1. Exemptions. Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.
2. Amendment. The policy shall be reviewed at least annually by the Board and any amendments made thereto must be approved by the Board. The Board shall adopt by written resolution a statement that it has reviewed the investment policies and strategies.

XXI. ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

A written copy of the investment policy shall be presented to any person offering to engage in an investment transaction related to Department funds. The qualified representative of the business organization shall execute a written instrument in a form acceptable to the Department and the business organization, substantially to the effect that the offering business organization has:

1. received and reviewed the investment policy of the Department; and
2. acknowledged that the business organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Department and the business organization that are not authorized by the Department's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the Department's entire portfolio or requires an interpretation of subjective investment standards.

The Investment Officer of the Department may not buy any securities from a person who has not delivered to the Department an instrument complying with this investment policy. (See sample documents in Attachment "C".)

XXII. TRAINING

Each member of the Department's Board and the Investment Officer who are in office on September 1, 1996 or who assume such duties after September 1, 1996, shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties. Training under this section is provided by the Texas Higher Education Coordinating Board and must include education in investment controls, security risks, strategy risks, market risks, diversification of

investment portfolio, and compliance with this policy. The Investment Officer shall attend a training session not less than once in a two-year period and may receive training from any independent source approved by the Department's Board. The Investment Officer shall prepare a report on the training and deliver the report to the Board not later than the 180th day after the last day of each regular session of the legislature.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment A

STRATEGY

SECTION 1

All of the Department's funds as listed below are program / operational in nature, excluding the bond funds which are listed separately in Section 2 below. The following funds are held in the State Treasury and the Department earns interest on those balances at the then applicable rate.

- General Fund
- Trust Funds
- Agency Funds
- Proprietary Funds (excluding Revenue Bond Funds)

SECTION 2

The Department's Revenue Bond Funds, including proceeds, are invested in various investments as stipulated by the controlling bond indenture. Certain investments, controlled by indentures prior to the latest revised Public Funds Investment Act, are properly grandfathered from its provisions. Typical investments include: guaranteed investment contracts; agency mortgage-backed securities resulting from the program's loan origination; in some cases, long-term Treasury notes; and bonds used as reserves with maturities that coincide with certain long-term bond maturities.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment B

POLICY STATEMENTS AND RECOMMENDED PRACTICE

Repurchase Agreements

1. Repurchase agreements (“repos”) are the sale by a bank or dealer of government securities with the simultaneous agreement to repurchase the securities on a later date. Repos are commonly used by public entities to secure money market rates of interest.
2. The Department affirms that repurchase agreements are an integral part of its investment program.
3. The Department and its designated Investment Officer should exercise special caution in selecting parties with whom they will conduct repurchase transactions, and be able to identify the parties acting as principals to the transaction.
4. Proper collateralization practices are necessary to protect the public funds invested in repurchase agreements. Risk is significantly reduced by delivery of underlying securities through physical delivery or safekeeping with the purchaser’s custodian. Over-collateralization, commonly called haircut, or marking-to-market practices should be mandatory procedures.
5. To protect public funds the Department should work with securities dealers, banks, and their respective associations to promote improved repurchase agreement procedures through master repurchase agreements that protect purchasers’ interests, universal standards for delivery procedures, and written risk disclosures.
6. Master repurchase agreements should generally be used subject to appropriate legal and technical review. If the prototype agreement developed by the Public Securities Association is used, appropriate supplemental provisions regarding delivery, substitution, margin maintenance, margin amounts, seller representations and governing law should be included.
7. Despite contractual agreements to the contrary, receivers, bankruptcy courts and federal agencies have interfered with the liquidation of repurchase agreement collateral. Therefore, the Department should encourage Congress to eliminate statutory and regulatory obstacles to perfected security interests and liquidation of repurchase collateral in the event of default.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment C

ACKNOWLEDGMENT OF RECEIPT OF INVESTMENT POLICY

- 1. I am a qualified representative of _____ (the “Business Organization”).
- 2. The Business Organization proposes to engage in an investment transaction (the “Investments”) with the Texas Department of Housing and Community Affairs (the “Department”).
- 3. I acknowledge that I have received and reviewed the Department’s investment policy.
- 4. I acknowledge that the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the business organization and the Department that are not authorized by the Department’s investment policy.
- 5. The Business Organization makes no representation regarding authorization of the Investments to the extent such authorization is dependent on an analysis of the Department’s entire portfolio and which requires an interpretation of subjective investment standards.

Dated this _____ day of _____, _____.

Name: _____

Title: _____

Business Organization: _____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment D

Annual Disclosure Statement for Financial Advisors and Service Providers

Figure 1
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

**ANNUAL DISCLOSURE STATEMENT FOR FINANCIAL ADVISORS AND SERVICE PROVIDERS
DUE NO LATER THAN APRIL 15**

INSTRUCTIONS:

- 1) THE REPORTING PERIOD COVERED BY THIS STATEMENT CONSISTS OF THE PRECEDING CALENDAR YEAR.
- 2) A NEW OR AMENDED STATEMENT MUST BE PROMPTLY FILED WITH THE PARTIES LISTED IN STEP 4 WHENEVER THERE IS NEW INFORMATION TO REPORT UNDER TEXAS GOVERNMENT CODE, SECTION 2263.005(a).
- 3) THIS STATEMENT MUST BE SUBMITTED EVEN IF YOU ANSWER "NO" TO QUESTIONS 1 AND 2 IN PART 2.
- 4) SUBMIT A COPY OF THIS STATEMENT TO THE FOLLOWING (FOR EACH GOVERNMENTAL ENTITY TO WHICH YOU PROVIDE SERVICES):
 - a. ADMINISTRATIVE HEAD OF THE STATE GOVERNMENTAL ENTITY
 - b. THE STATE AUDITOR (mail to P.O. Box 12067, Austin, TX, 78711-2067)
- 5) PROMPT FILING REQUIRES A POSTMARK DATE NO LATER THAN APRIL 15 IF THE COMPLETED FORM IS RECEIVED AT THE CORRECT ADDRESS.

PART 1: GENERAL INFORMATION

FILING TYPE (Check one) ANNUAL DISCLOSURE FOR YEAR ENDING DECEMBER 31, 20____
 UPDATED DISCLOSURE

NAME OF INDIVIDUAL _____ JOB TITLE _____

NAME OF BUSINESS ENTITY _____ TYPE OF SERVICE PROVIDED _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____ PHONE _____

NAME OF STATE GOVERNMENTAL ENTITY AND/OR GOVERNING BOARD MEMBER TO WHICH YOU ARE PROVIDING SERVICES _____

PART 2: DISCLOSURES

DEFINITION: (Texas Government Code, Section 2263.002)

Financial advisor or service provider includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISOR OR SERVICE PROVIDER (Texas Government Code, Section 2263.005)

Financial advisors and service providers (see definition) must disclose information regarding certain relationships with, and direct or indirect pecuniary interests in, any party to a transaction with the state governmental entity, without regard to whether the relationships are direct, indirect, personal, private, commercial, or business relationships.

- 1) Do you or does your business entity have any relationship with any party to a transaction with the state governmental entity (other than a relationship necessary to the investment or funds management services that you or your business entity performs for the state governmental entity) for which a reasonable person could expect the relationship to diminish your or your business entity's independence of judgment in the performance of your responsibilities to the state entity?
Yes _____ No _____

If yes, please explain in detail. (Attach additional sheets as needed.)

2) Do you or does your business entity have any direct or indirect pecuniary interests in any party to a transaction with the state governmental entity if the transaction is connected with any financial advice or service that you or your business entity provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds?

Yes_____ No_____

If yes, please explain in detail. (Attach additional sheets as needed.)

PART 3: SIGNATURE AND DATE

I hereby attest that all information provided above is complete and accurate. I acknowledge my or my firm's responsibility to submit promptly a new or amended disclosure statement to the parties listed in step 4 of the instructions if any of the above information changes.

Signature_____ Date_____

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Attachment E



COMPTROLLER OF PUBLIC ACCOUNTS
Broker Dealer List
June, 2014

Amherst Securities Group, LP	Mesirow Financial, Inc.
Barclay's Capital Inc.	Mischler Financial Group
BedRok Capital	Mitsubishi UFJ Securities *
Blaylock Beal Van LLC	Mizuho Securities USA Inc.
BMO Capital Markets	Morgan Stanley & Co., Inc.
BNP Paribas Securities Corp.	MFR Securities
BNY Mellon Capital Markets *	National Alliance Capital Markets
BOSC, Inc.	Nomura Securities International Inc.
Cantor Fitzgerald & Co.	Piper Jaffray Companies
Capital Institutional Services, Inc.	Raymond James
Citigroup Global Markets Inc.	RBC Capital Markets, LLC
Coastal Securities Inc.	RBS Securities Inc.
Credit Suisse (USA), LLC	Rice Securities, LLC
D.A. Davidson & Co.	Robert W. Baird & Co., Inc
Daiwa Capital Markets America, Inc.	SAMCO Capital Markets Inc.
Deutsche Bank Securities, Inc.	Samuel Ramirez & Company (H) *
Drexel Hamilton LLC	Scotia Capital (USA) Inc.
The Fig Group, LLC (H)	Signature Securities Group Corp.
First Southwest Company	S.G. Americas Securities LLC
Frost Capital Markets	Stifel, Nicholas & Company Inc.
FTN Financial Securities Corp.	SunTrust Robinson Humphrey Inc.
Goldman Sachs & Co.	T.D. Securities
HSBC Securities (USA), Inc.	UBS Securities
Jefferies & Company, Inc.	Vining Sparks IGB, LP
J.P. Morgan Securities LLC	Wells Fargo Securities, LLC
KCG Americas LLC	Williams Capital *
Loop Capital Markets, Inc.	Zions First Nat'l. Bank Capital Markets
Merrill Lynch Pierce Fenner & Smith	

(H) --Historically Underutilized Business

*Added June, 2014.



COMPTROLLER OF PUBLIC ACCOUNTS
Broker Dealer List
June, 2015

Amherst Pierpoint Securities LLC*

Barclay's Capital Inc.	Mischler Financial Group,
Blaylock Beal Van LLC	Mitsubishi UFJ Securities
BMO Capital Markets Corp.	Mizuho Securities USA Inc
BNP Paribas Securities Corp.	Morgan Stanley Smith Bar
BNY Mellon Capital Markets, LLC	MFR Securities, Inc.
BOSC, Inc.	National Alliance Capital M
Cantor Fitzgerald & Co.	Nomura Securities Intern:
Capital Institutional Services, Inc.	Piper Jaffray & Co.
Citigroup Global Markets Inc.	Raymond James & Associa
Coastal Securities Inc.	RBC Capital Markets, LLC
Credit Suisse (USA), LLC	RBS Securities Inc.
D.A. Davidson & Co.	Rice Securities, LLC
Daiwa Capital Markets America, Inc.	Robert W. Baird & Co., Inc
Deutsche Bank Securities, Inc.	Samuel Ramirez & Compa
Drexel Hamilton LLC	Scotia Capital (USA) Inc.
The Fig Group, LLC (H)	Signature Securities Group
First Southwest Company, LLC	S.G. Americas Securities L
Frost Bank Capital Markets	Stifel, Nicholas & Compa
FTN Financial Securities Corp.	SunTrust Robinson Hump
Goldman Sachs & Co.	T.D. Securities (USA) LLC
HSBC Securities (USA), Inc.	UBS Securities LLC
Jefferies, LLC	UMBFSI* (United Missour
J.P. Morgan Securities LLC	Vining Sparks IGB, LP
KCG Americas LLC	Wells Fargo Securities, LL
Lloyd's Securities Inc.*	Williams Capital Group. LL

11

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action proposing an amendment to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2, Definitions, and directing that it be published for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to §2306.053 Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department has received comments from Homeless Housing and Services Program (“HHSP”) Subrecipients asking to streamline the intake process for clients receiving rapid re-housing or homelessness prevention; asking to use HHSP as a source of match for the Emergency Solutions Grants (“ESG”) Program; and asking to create greater flexibility in eligibility requirements to allow clients to be served until they are self-sufficient;

WHEREAS, the proposed amendment to 10 TAC §5.2 revises the definition of Low Income to clarify that: 1) households assisted through HHSP are categorically income eligible for HHSP rapid re-housing or homelessness prevention if a member of the household is a recipient of Supplemental Security Income (“SSI”) or a recipient of a means tested veterans program; 2) limits will be defined by the U.S. Department of Housing and Urban Development (“HUD”) ESG Program and not HUD’s Section 8 Program; 3) households receiving homelessness prevention must be below 30% AMI of the ESG income limits and not “at or below” 30% AMI of the ESG income limits; and 4) while households must be below the 30% AMI used in the ESG Program at the time of homelessness prevention qualification, the household receiving rapid re-housing or homelessness prevention may be up to, but not exceed, 50% of the ESG limits at recertification of income twelve months after initial intake; and

WHEREAS, the 2016 Low Income Home Energy Assistance Program (“LIHEAP”) state plan described categorical income eligibility for recipients of SSI or means tested veteran’s programs, but the change was inadvertently not incorporated in the Texas Administrative Code;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions, in the form presented to this meeting, to be published 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

The amendment changes are made to the definition of Low Income. The changes proposed to clause (E) address the HHSP. The purpose of the amendment is to clarify four aspects of eligibility for HHSP clients:

1. First is to clarify that if any member of a Household is receiving SSI or is a recipient of a means tested veterans program, the household will be categorically eligible for rapid re-housing or homelessness prevention in HHSP without further income determination. Households that qualify for SSI or means tested veterans programs already have been determined by the Social Security Administration and the Department of Veterans Affairs to have limited incomes and resources.
2. Second, the income limits will conform to the ESG Program and not the Section 8 Program, in order to make the connection between ESG and HHSP clearer when HHSP is used as match for ESG. Until a few years ago, the Section 8 income limits were the same as the ESG limits, but Congress has since changed the income limits for Section 8.
3. Third, the initial income must be “below,” not “at or below” 30% AMI for households at initial intake for homelessness prevention to qualify as match for ESG.
4. Fourth, specifies that while a person must meet the ESG income limits of below 30% AMI at the time of qualification for homelessness prevention, the person may be up to, but not exceed, 50% of ESG limits at recertification for rapid re-housing or homelessness prevention which must occur no later than twelve months after initial intake. The allowance for higher income at recertification will better enable Subrecipients to help clients as the clients better their circumstances. Subrecipients will not be forced to stop assistance before the client can be transitioned to a permanent housing program. It should be noted that when clients are recertified above 30% AMFI but under 50% AMI per ESG income limits, then the clients cannot be used as match for ESG.

The changes proposed to clause (B) relate to the income qualification for the LIHEAP Program. That section currently indicates that the standard is 150% of poverty, but it is also now adding that households will also be categorically eligible if a Household member receives SSI or benefits from a means tested veterans program.

Attachment A: Preamble and Proposed Amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.2

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.2 Definitions.

The purpose of the amendment to 10 TAC §5.2 is to state that: 1) households assisted through the Low Income Home Energy Assistance Program are categorically income eligible if they are recipients of Supplemental Security Income (“SSI”) or a means tested veterans program; 2) households assisted through the Homeless Housing and Services Program (“HHSP”) are categorically eligible for HHSP rapid re-housing or homelessness prevention if they are recipients of Supplemental Security Income (“SSI”) or a means tested veterans program; 3) that while households must be below 30% of the Emergency Solutions Grants (“ESG”) Income Limits at the time of program qualification, the person may be up to, but not exceed, 50% of the ESG limits at recertification of income twelve months after initial intake; and 4) that Income Limits will be defined by the U.S. Department of Housing and Urban Development (“HUD”) ESG Program and not HUD’s Section 8 Program.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications 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 amendments are in effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and the ability to continue to assist low income clients that may otherwise have lost access to services. There will not be any economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 16, 2016, to June 15, 2016, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. June 15, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The proposed amendments affect no other code, article, or statute.

§5.2. Definitions

(a) To ensure a clear understanding of the terminology used in the context of the programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

(3) Awarded Funds--The amount of funds committed by the Department's board to a Subrecipient or service area.

(4) Child--Household dependent not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Collaborative Application--An application from two or more organizations to provide services to the target population.

(7) Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(8) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(9) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(10) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(12) Contracted Funds--The amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(13) Declaration of Income Statement (DIS)--A Department-approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code.

(14) Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG.

(15) Department of Energy (DOE)--Federal department that provides funding for the weatherization assistance program.

(16) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(17) Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(19) Elderly Person--

(A) for CSBG, a person who is fifty-five (55) years of age or older;

(B) for CEAP, WAP and HHSP, a person who is sixty (60) years of age or older; and

(C) for ESG, a person who is sixty-two (62) years of age or older

(20) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(21) Equipment--Tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.

(22) Expenditure--Funds having been drawn from the Department through the Contract System. For purposes of this rule, expenditure will include draws requested through the system.

(23) Families with Young Children--A family that includes a Child age five (5) or younger.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.

(26) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(27) Homeless Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(28) Household--Any individual or group of individuals who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(29) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(30) Local Unit of Government--City, county, council of governments, and housing authorities.

(31) Low Income--Income in relation to family size and that governs income eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP and LIHEAP WAP, at or below 150% of the HHS Poverty Income guidelines or categorically eligible because a Household member receives SSI or benefits from a means tested veterans program;

(C) For CSBG, at or below 125% of the HHS Poverty Income guidelines;

(D) For ESG, below 30% of the Median Family Income (MFI) as defined by HUD's 30% Income Limits for All Areas for persons receiving prevention assistance or as amended by HUD;

(E) For HHSP, there is no procedural requirement to verify income for persons living on the street (or other places not fit for human habitation), living in emergency shelter, or receiving rapid re-housing. ~~For all other persons, at or below 30% of the Extremely Low Income Limits as defined by HUD for the Section 8 program.~~ For all other persons, below 30% of the MFI as

defined by HUD for the ESG Program, although persons may be up to, but not exceed, 50% of ESG income limits, at recertification for rapid re-housing or homelessness prevention. Households in which any member is a recipient of SSI or a means tested veterans program are categorically income eligible.

(32) Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(33) Migrant Farm Worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

(34) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(35) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(36) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(37) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(38) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(39) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(40) Population Density--The number of persons residing within a given geographic area of the state.

(41) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(42) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(43) Production Schedule--A Production schedule signed by the applicable Executive Director/Chief Executive Officer of the Subrecipient, and approved by the Department meeting the requirements of this definition. The Production Schedule shall include the estimated monthly and quarterly performance targets and the estimated monthly and quarterly expenditure targets for all Contracted Funds reflecting achievement of the criteria identified in the specific program sections of this chapter by the end of the contract period.

(44) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(45) Referral--The process of providing information to a client Household about an agency,

program, or professional person that can provide the service(s) needed by the client.

(46) Reobligation--The reallocation of deobligated funds to other Subrecipients administering those same program's funds.

(47) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

(48) Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered federal or state awards during such fiscal year provided that each such audit shall encompass the financial statements and schedule of expenditures of federal or state awards for each such department, agency, and organizational unit.

(49) State--The State of Texas or the Department, as indicated by context.

(50) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(51) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(52) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(53) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(54) Supplies--All tangible personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the Subrecipient for financial statement purposes or \$5,000, regardless of the length of its useful life.

(55) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(56) Supplemental Security Income ("SSI") – a means tested program run by the Social Security Administration

~~(5657)~~ Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

~~(5758)~~ Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

~~(5859)~~ Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

~~(5960)~~ Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. In addition, Chapter 2105, Texas Government Code, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

~~(6061)~~ Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

~~(6162)~~ United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

~~(6263)~~ Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

~~(6364)~~ Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action proposing amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.19, Income Eligibility, and directing that it be published for public comment in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to §2306.053 Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department has received updated guidance from the Department of Energy (“DOE”) in WPN 16-3 resulting in minor changes to its income determination requirements, and it is the Department’s intent that income determination for U.S. Health and Human Services (“HHS”) is consistent with DOE guidance, as reflected in the Community Services Block Grant (“CSBG”), and Low Income Home Energy Assistance (“LIHEAP”) plans;

WHEREAS, the Department has received questions from Subrecipients on how long an application intake is valid if clients appear self-sufficient for a period but experience another crisis after initial assistance has ended; and

WHEREAS, the proposed amendments to 10 TAC §5.19 relating to Income Eligibility state that: 1) the certification of income eligibility can be used for up to 12 consecutive months from the time of certification, unless a different period is required by federal regulation, 2) recertification of income must occur after 12 months from the time of the last certification (unless a more frequent period is required by federal regulation), and 3) that the method of calculation for income for HHSP must match the Emergency Solutions Grants (“ESG”) method;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.19 Income Eligibility, in the form presented to this meeting, to be published 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

The amendment changes proposed to be made to HHS and DOE funded programs are being made to ensure Department rules are consistent with newly released federal changes in WPN 16-3. It is

the Department's intent that HHS income determinations are consistent with DOE guidance, as reflected in the CSBG and LIHEAP plans.

The amendment changes relating to HHSP are to clarify that a client's income determination is good for up to 12 consecutive months, that recertification of income is needed after 12 consecutive months, and that the method of calculation will be the same as the ESG Program. Some clients occasionally have breaks in service in which they stop receiving assistance and can support themselves for a short period of time, but then need assistance again. The rules were unclear whether income calculation would have to be re-determined for every instance of assistance needed within a 12-month period. The clarification allows for smoother delivery of assistance for clients that have a break in service within a 12-month period for HHSP and establishes a new redetermination of income after the 12-month period. In addition, the change on which method of calculation to use will facilitate the use of HHSP as match for ESG, which many ESG Subrecipients use. The changes for HHSP would not begin until September 1, 2016.

Attachment A: Preamble and Proposed Amendments to 10 TAC Chapter 5 Community Affairs Programs, Subchapter A, General Provisions, §5.19

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.19 Income Eligibility.

The amendment to Income Eligibility for HHS and DOE funded programs are to ensure the rules are consistent with newly released federal changes.

The amendment clarifies that income eligibility must be done at least every twelve months (unless a more frequent period is required by federal regulation), that income must be re-certified after a period of twelve months (this is a new requirement for HHSP), and that the method of calculation for HHSP income must match the Emergency Solutions Grants (“ESG”) method.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications 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 amendments are in effect, the public benefit anticipated as a result of the amendments will be clarity of program requirements and ease delivery of services when clients have a break in assistance. There will not be any economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 16, 2016, to June 16, 2016, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. June 16, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The proposed amendments affect no other code, article, or statute.

§5.19. Income Eligibility

(a) These changes are effective for HHSP funds received by Subrecipients on or after September 1, 2016.

(#b) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

(2) Excluded Income:

- (A) Capital gains;
- (B) Any assets drawn down as withdrawals from a bank;
- (C) Balance of funds in a checking or savings account;
- (D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));
- (E) The sale of property, a house, or a car;
- (F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
- (G) Tax refunds, Earned Income Tax Credit refunds;
- (H) Jury duty compensation;
- (I) Gifts, loans, and lump-sum inheritances;
- (J) One-time insurance payments, or compensation for injury;
- (K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (L) Reimbursements (for mileage, gas, lodging, meals, etc.);
- (M) Employee fringe benefits such as food or housing received in lieu of wages;
- (N) The value of food and fuel produced and consumed on farms;
- (O) The imputed value of rent from owner-occupied non-farm or farm housing;
- (P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);
- (Q) ~~Housing assistance and~~ Combat zone pay to the military;
- (R) Veterans (VA) Disability Payments;
- (S) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (T) Child support payments (amount paid by payor may not be deducted from income);
- (U) Income of Household members under eighteen (18) years of age;
- (V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;
- (W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;
- (X) Depreciation for farm or business assets;
- (Y) Reverse mortgages;
- (Z) Payments for care of Foster Children;
- (AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- (BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));
- (CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));
- (DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(EE) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(JJ) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);

(LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(SS) Any other income required to be excluded by the federal or state funding program.

~~(bc)~~ For HHS and DOE funded programs, ~~The~~ the requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) Subrecipient must collect verifiable documentation of Household income received in the thirty (30) days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(3) To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

(4) Except where a more frequent period is required by federal regulation, Rere-certification of income eligibility must occur at least every twelve months.

~~(e) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.~~

~~(d) For HHSP, Subrecipients may select either the method described in (a) – (c) of this section or the must use method described in (e) of this section, but once selected the method must be used consistently throughout the contract period.~~

(ec) For ESG and HHSP, Subrecipients must use the income determination method outlined in 24 CFR 5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income, as may be amended from time to time.

(d) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(fe) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include, but are not limited to, crisis situations such as applicants that are affected by a natural disaster which prevents the applicant from obtaining income documentation, an applicants that flees a home due to physical abuse, or an applicants who are is unable to locate income documentation of a recently deceased spouse Household member. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(gf) The DIS must be notarized. Attainment of notary public commission is an allowable activity as an administrative cost.

~~(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.~~

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action proposing amendments to 10 TAC Chapter 20 Single Family Programs Umbrella Rule, §20.15, Compliance and Monitoring, and 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101, Purpose and Overview, and directing that they be published for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Section 2306.053 of the Texas Government Code, the Department is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Compliance Committee was created in the Single Family Programs Umbrella Rule and Community Affairs Rules to provide an avenue through which an Administrator or Subrecipient could pursue review of compliance findings for which they were in disagreement; and

WHEREAS, the Department finds that when Administrators or Subrecipients are meeting with the Compliance Committee they are generally not addressing whether rules have been properly interpreted and applied, but are seeking leniency in what has been a proper application of the rules, and the Committee is therefore not filling its intended purpose, and staff is now proposing amendments to the rules to remove the reference and description of the Compliance Committee;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed amendment to 10 TAC Chapter 20 Single Family Programs Umbrella Rules, §20.15, Compliance and Monitoring, and 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101, Purpose and Overview, in the form presented to this meeting, to be published 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

The Compliance Committee was established under several sections of the Department's rules with the intent of applying to all Department programs. It was created in Chapter 20, the Single Family Programs Umbrella Rules; Chapter 5, the Community Affairs Programs Rules; and Chapter 10, the Uniform Multifamily Rules. At the time it was created, it was contemplated that the Compliance Committee would provide an avenue by which an Administrator, Subrecipient, Developer, etc. could pursue further review of compliance findings for which they were in disagreement. Staff has found

that the committee is put in a position of both questioning and challenging the work of compliance staff, and considering interpretations of regulations that may already have been discussed between Compliance staff and legal staff when issuing the findings originally. Further, those who have requested meetings of the Compliance Committee are generally not addressing whether rules have been properly interpreted and applied, but are seeking leniency in what has been a proper application of the rules. The subsequent step for someone who has requested to appear before the Compliance Committee and has not been satisfied by the response of the Compliance Committee is to file an appeal.

Staff recommends eliminating the existence of the Compliance Committee and suggests in the amendments that when an Administrator, Subrecipient, Developer, etc. does have concerns with a compliance finding, the appropriate avenue is to file an appeal with the Executive Director consistent with 10 TAC Chapter 1, which is the avenue used for most other areas of the Department.

This board action proposes these changes for the Single Family and Community Affairs Programs. Staff anticipates to propose a similar amendment in the corresponding Multifamily Rules when those rules are proposed for rule-making action in the fall.

Attachment A: Preamble and Proposed Amendment to 10 TAC Chapter 20 Single Family Programs Umbrella Rule, §20.15

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §20.15, Compliance and Monitoring.

The purpose of the amendment to 10 TAC §20.15 is to remove the reference to the Compliance Committee. The rule will alternatively indicate that when an Administrator, Subrecipient, Developer, etc. has concerns with a compliance finding, they may pursue an appeal with the Executive Director consistent with the process used in 10 TAC Chapter 1 for most other areas of the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications 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 amendments are in effect, the public benefit anticipated as a result of the amendments will be more streamlined handling of Administrator concerns. There will not be any economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 16, 2016, to June 15, 2016, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. June 15, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§20.15. Compliance and Monitoring

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of their Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting their obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body.

(e) Upon request, Administrators must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Administrator Response. If there are any findings of noncompliance requiring corrective action, the Administrator will be provided a thirty (30) day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three (3) business days. Failure to timely respond to a corrective action notice and/or failure to correct all findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral for administrative penalties, or other action under this Title.

(h) Monitoring Close Out. After the end of the corrective action period, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue. Results of monitoring findings may be reported to the Executive Awards and Review Advisory Committee for consideration relating to previous participation.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Administrator in noncompliance, and the Administrator

disagrees, the Administrator may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Administrators may contact an applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Administrator may submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title. ~~request review by the Department's Compliance Committee, as set out in paragraph (l) of this subsection.~~

(3) Administrators may request Alternative Dispute Resolution (ADR). An Administrator may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(j) If Administrators do not respond to a monitoring letter or fail to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) Administrators must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office or others. If a finding or concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

~~(l) Compliance Committee-~~

~~(1) The Compliance Committee is a committee of three (3) to five (5) persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Divisions will not be appointed to the committee, but may be available as a resource to the Committee.~~

~~(2) Informal discussion with Compliance staff. If the Administrator has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance staff, including, as needed, the Chief of Compliance.~~

~~(3) Informal discussion with the Compliance Committee. An Administrator may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance staff did not resolve the issue.~~

~~(4) Compliance Committee Process and Timeline:~~

~~— (A) At any time, the Administrator may call or request an informal conference with the Compliance staff and/or the Chief of Compliance.~~

~~— (B) If a call or an informal conference with the Compliance staff does not result in a resolution of the issue, the Administrator may, within thirty (30) days of the call or informal conference with Compliance staff, request a meeting with the Compliance Committee.~~

~~— (C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Administrator. An Administrator should not offer evidence, documentation, or information to the Compliance Committee that was not presented to Compliance staff during the informal staff conference. If additional information is offered, the Compliance Committee may disallow the information or refer the matter back to Compliance staff to allow review of the additional information prior to any consideration by the Compliance Committee.~~

~~— (D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed in~~

~~accordance with appeal rights described in Chapter 1 of this Title.~~

Attachment B: Preamble and Proposed Amendment to 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101, Purpose and Overview

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter L, Compliance and Monitoring, §5.2101, Purpose and Overview.

The purpose of the amendment to 10 TAC §5.2101 is to remove the reference to the Compliance Committee. The rule will alternatively indicate that when an Administrator, Subrecipient, Developer, etc. has concerns with a compliance finding, they may pursue an appeal with the Executive Director consistent with the process used in 10 TAC Chapter 1 for most other areas of the Department.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications 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 amendments are in effect, the public benefit anticipated as a result of the amendments will be more streamlined handling of Administrator concerns. There will not be any economic cost to any individuals required to comply with the amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 16, 2016, to June 15, 2016, to receive input on the amendments. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attention: Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: cadrulecomments@tdhca.state.tx.us, or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. June 15, 2016.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

§5.2101, Purpose and Overview

(a) This subchapter provides the procedures that will be followed for monitoring for compliance with the community affairs programs administered by the Texas Department of Housing and Community Affairs (the "Department"). As of the date of the adoption of this subchapter, those programs include the Community Services Block Grant program (CSBG), the Low Income Home Energy Assistance Program (LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program (LIHEAP WAP) and the Comprehensive Energy Assistance Program (CEAP)), the Department of Energy Weatherization Assistance Program (DOE WAP), the Emergency Solutions Grant (ESG), and the Homeless Housing and Services Program (HHSP).

(b) Any entity administering any or all of the programs enumerated in subsection (a) of this section is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of community affairs programs under this subchapter.

(c) Frequency of reviews, information collection. In general, Subrecipients will be scheduled for monitoring based on federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of contracts administered by the Subrecipient, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients will have an onsite review and which may have a desk review.

(d) The Department will provide a Subrecipient with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient by email to the Subrecipient's chief executive officer at the email address most recently provided to the Department by the Subrecipient. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §5.21 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(e) Upon request, Subrecipients must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include:

(1) Minutes of the governing board and any committees thereof, together with all supporting materials;

(2) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(3) Procurement documentation;

(4) The Subrecipient's Board approved operating budget;

(5) The Subrecipient's strategic plan or comparable document if applicable;

(6) Correspondence to or from any independent auditor;

(7) Contracts with any third party Subrecipients of goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(8) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(9) Applicable client files with all required documentation;

(10) Applicable human resources records;

(11) Monitoring reports from other funding entities;

(12) Client files regarding complaints, appeals and termination of services; and

(13) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, United States Department of Housing and Urban Development (HUD) requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD limited English proficiency requirements, requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(f) Post Monitoring Procedures. After the monitoring review is completed, the Subrecipient will be briefed on the initial findings and/or observations through an exit briefing, which may be in person or through a conference call. The Subrecipient will be notified via conference call or email of any finding(s) and/or observation(s) not discussed during the exit briefing. In general, within thirty (30) days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed and sent through the U.S. Postal Service to the Board Chair and the Subrecipient's Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided thirty (30) days, from the date of the email, to respond which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Subrecipient believes justifies the extension. The Department will approve or deny the extension request within three (3) business days.

(h) Monitoring Close Out. Within forty-five (45) days after the end of the corrective action period, a close out letter will be issued to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Subrecipient may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Subrecipients may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(2) If the issue is related to application of a provision of the contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Subrecipient may submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title. request review by the Department's Compliance Committee, as set out in subsection (j) of this section.

(3) Subrecipients may request Alternative Dispute Resolution (ADR). A Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

~~(j) Compliance Committee.~~

~~(1) The Compliance Committee is a committee of three (3) to five (5) persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Division will not be appointed to the committee but will be available to provide guidance to Department staff.~~

~~(2) Informal discussion with Compliance Monitoring staff. If the Subrecipient has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance Monitoring staff, including, as needed, the Chief of Compliance.~~

~~(3) Informal discussion with the Compliance Committee. A Subrecipient may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance Monitoring staff did not resolve the issue.~~

~~(4) Compliance Committee Process and Timeline:~~

~~—(A) At any time, the Subrecipient may call or request an informal conference with the Compliance Monitoring staff and/or the Chief of Compliance.~~

~~—(B) If a call or an informal conference with the Compliance Monitoring staff does not result in a resolution of the issue, the Subrecipient may, within thirty (30) days of the call or informal conference with Compliance Monitoring staff, request a meeting with the Compliance Committee.~~

~~—(C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Subrecipient. A Subrecipient should not offer evidence, documentation, or information to the Committee that was not presented to Compliance Monitoring staff during the informal staff conference. If additional information is offered, the Committee may disallow the information or refer the matter back to Compliance Monitoring staff to allow review of the additional information prior to any consideration by the Committee.~~

~~—(D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed directly to the Board.~~

(jk) If Subrecipients do not respond to a monitoring letter or fail to provide acceptable evidence of compliance within six (6) months of notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, review for a third party review, full or partial cost reimbursement, or contract suspension.

2a

TDHCA Outreach Activities, March 2016

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

Event	Location	Date	Division	Purpose
Supportive Housing = Healthcare Conference Presentation	Austin	March 1	Fair Housing/Data Mgt/Reporting	Panelist
Stakeholder Discussion/Proposed Utility Allowance Rule	Austin	March 9	Compliance	Facilitator
TAA/Housing Tax Credit Training	Houston	March 15	Compliance	Training
TAA/Housing Tax Credit Training	Beaumont	March 22	Compliance	Training
Property Management Training/Section 811	El Paso	March 23-24	Fair Housing/Data Mgt/Reporting	Training
Section 811/Briefing Meeting with Congressman O'Rourke	El Paso	March 24	Fair Housing/Data Mgt/Reporting	Briefing
Roundtable/2017 QAP – High Opportunities, Locations	Austin	March 30	Multifamily Finance	Roundtable Hearing
Innovation Accelerator Program – Supporting Housing Tenancy	Austin	March 30	Housing Resource Center	Participant
TDHCA 2016 Customer Service Survey	Austin	March 31-April 29	Housing Resource Center	Survey

Internet Postings of Note, March 2016

A list of new or noteworthy documents posted to the Department's website

2016 State of Texas Low Income Housing Plan and Annual Report — *providing an overview of statewide housing needs and a report on the administration, funding levels, performance measures and the distribution of TDHCA's resources from the previous fiscal year:*

www.tdhca.state.tx.us/housing-center/pubs-plans.htm

2016 9% HTC Full-Application Logs: March 3 — *preliminary list reflecting applications submitted in the full application cycle, with total self score among several other items of information:*

www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Amended 2016 State of Texas Consolidated Plan: One-Year Action Plan — *reflecting revisions to required document describing the State's administration of the HOME, ESG, CDBG, and HOPWA programs:*

www.tdhca.state.tx.us/housing-center/pubs-drafts.htm; www.tdhca.state.tx.us/public-comment.htm

2016 9% Individually Imaged Full Applications — *detailing the specifics of each application seeking credits in the 2016 competitive HTC allocation cycle:*

www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

Fair Housing: Announcements — *providing details regarding series of informal webinar presentations in coordination with the Texas Workforce Commission in conjunction with Fair Housing Month:*

www.tdhca.state.tx.us/fair-housing/announcements.htm

Amy Young Barrier Removal Program Reservation System: March 15 — detailing remaining funds in any regions now combined into one state-wide pool and available until depletion:
www.tdhca.state.tx.us/hft/single-family/amy-young.htm

HOME: Single Family Program Reservation System Fund Release — detailing HOME funds programmed for HRA and TBR-A general set-aside activities and which are currently oversubscribed:
www.tdhca.state.tx.us/home-division/announcements.htm

4% Housing Tax Credit/Bond Status Log: March 10 — listing applicants seeking bond financing through either the Department or local issuers by region, development name, construction type, target population, bond reservation amount, etc:
www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm;
www.tdhca.state.tx.us/multifamily/bond/index.htm

Request for Qualification: Housing Tax Credit Program Legal Counsel — seeking a qualified vendor to advise on the Department's application process and rules, monitoring, and analysis of the HTC Program (links to the Comptroller's Office webpage):
http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=123439

Homeless Veterans Study: Steps to Complete the Study on Homelessness among Veterans — linking to online forum to gather input on the Study of Homelessness among Veterans to provide input on recommendations to the State's approach to address veteran homelessness:
www.tdhca.state.tx.us/tich/hvs.htm

Texas Bootstrap Loan Program: Nonprofit Owner-Builder Housing Providers — updated list detailing organizations certified to administer the Bootstrap Program, the cities served, and phone number:
www.tdhca.state.tx.us/oci/bootstrap.htm

Texas First Time Homebuyer Program: Homebuyer Education Tool — featuring a free online pre- and post-purchase homebuyer education course, as well as an introductory course to the Texas Mortgage Credit Certificate Program:
education.myfirsttexashome.com/

2016 Quantifiable Community Participation Letters Received — detailing letters of support or opposition to applicants in the 2016 tax credit cycle submitted under §11.9(d)(4) of the 2016 QAP:
www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm

2016 Community Services Block Grant Program: Subrecipients — listed by agency name, address, chief executive, CSBG contact, and counties served:
www.tdhca.state.tx.us/community-affairs/csbgs/index.htm

Section 811 Program: Owner/Agent Manual — providing guidance for property owners and management agents representing properties participating in this project-based rental assistance program:
www.tdhca.state.tx.us/section-811-pra/participating-agents.htm

Section 811 Program: Participating Property Chart — updated to reflect addition of three properties participating in this project-based rental assistance program:
www.tdhca.state.tx.us/section-811-pra/participating-properties.htm

Texas Statewide Homebuyer Education: Provider List — listed by organization name, city, phone number, county or counties served, and website address:
www.tdhca.state.tx.us/homeownership/fthb/buyer_reqs_step5.htm

Request for Applications: Administration of Weatherization Assistance Program — *seeking a qualified entity to administer the Department's WAP activities in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties:*

www.tdhca.state.tx.us/community-affairs/nofas.htm

Section 811 Program: Program Eligibility Criteria — *updated to reflect new program income limits:*

www.tdhca.state.tx.us/section-811-pra/participating-properties.htm

Amended 2016 Emergency Solutions Grants Program: Notice of Funding Availability — *reflecting new deadlines and material associated with application submissions for entities seeking to administer funds through the Department's ESG Program:*

www.tdhca.state.tx.us/community-affairs/nofas.htm

Weatherization Assistance Program: Notice of Funding Availability — *for eligible entities interested in administering WAP funds specifically in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties:*

www.tdhca.state.tx.us/nofa.htm

2b

BOARD REPORT ITEM
COMPLIANCE DIVISION
APRIL 28, 2016

Compliance Division Update

BACKGROUND

This is a periodic report about ongoing and emerging issues in the Compliance Division.

Subrecipient Monitoring:

Community Services Inc. (“CSI”), a Community Action Agency (“CAA”) is located in Corsicana and administers the Community Services Block Grant (“CSBG”) program, the Low Income Home Energy Assistance Program (“LIHEAP”), and the Department of Energy Weatherization Program (“DOE-WAP”). A monitoring review of all programs was conducted in December 2015. The review resulted in nine findings and the requirement to submit a Quality Improvement Plan (“QIP”). The plan and a response to the report were received March 11, 2016. Seven of the findings remain unresolved. The Community Action Partnership has been engaged to provide training and technical assistance to CSI.

At the Board meeting of July 30, 2015, the Executive Award Review Advisory Committee recommended and the Board approved an award of 2016 LIHEAP funds to CSI conditioned on resolution of findings identified in the single audit and submission of an acceptable cost allocation plan. At the Board meeting of March 31, 2016, the Executive Award Review Advisory Committee recommended and the Board approved an award of 2016 DOE-WAP funds to CSI conditioned on resolution of unresolved monitoring findings and repayment of disallowed costs (or acceptability of a repayment plan) to the satisfaction of the Department within 30 days of the Board action. Resolution of some of the findings requires repayment of disallowed amounts. CSI has advised that it plans to sell real estate to generate the funds needed for repayment. On April 15, 2016, CSI submitted an updated cost allocation plan which is under review. If CSI is not able to access their 2016 LIHEAP and/or DOE-WAP funds alternative providers will be identified to prevent or minimize lapses in service with 24.99% of the funds.

In November 2015, a monitoring review of Urban Community Centers (“UCC”) formerly known as the Urban League of Greater Dallas, was conducted. The review resulted in six findings and the requirement to submit a QIP. The plan and a response to the report were received March 11, 2016. All findings remain unresolved. The QIP was denied on March 10, 2016. On April 4, 2016, Department staff submitted a report required by 42 U.S.C. §9915 regarding the training and technical assistance that has been provided to UCC, and informed U.S. Health and Human Services that the Department intends to initiate proceedings to terminate the eligible entity status of the UCC. Notice of an opportunity for a hearing was issued on April 14, 2016. UCC has 30 days to request a hearing.

The subrecipient monitoring area has welcomed on board some new employees. Stephenia Coleman joined the Subrecipient Monitoring Section of the division in October of 2015. She was previously employed by the Health and Human Service Office of Inspector General. Chad Turner was hired February 1, 2016. Chad previously worked for a Community Action Agency in their weatherization program. Christopher Shoopman joined the Compliance Division March 8, 2016. Christopher relocated from Oregon where he was employed by Oregon Housing and Community Services as a Weatherization Coordinator.

Multifamily Monitoring:

Since the last update three new Compliance Monitors have joined the Compliance Division; Carolyn Metzger, Christopher Alonzo, and Yvette Luna. All three have prior experience in tax credit compliance and hit the ground running.

Cody Campbell has been promoted to Compliance Administrator. In this new capacity Cody will review and approve utility allowances, complete previous participation reviews, prepare and present Compliance training and other high level administrative functions of the Compliance Division.

There are several vacancies in the Physical Inspections Section of the Compliance Division. On April 23, 2016, Stephen Jung, hiring manager for the section, will be attending a hiring fair designed to increase the number of Veteran state employees as part of a new initiative to employ qualified Veterans at state agencies.

HUD released the 2016 Income Limits on March 28, 2016. The new limits have been incorporated into the Department's income and rent limit tool and are applicable for all multifamily rental programs with the exception of the HOME and Neighborhood Stabilization programs. The Community Planning and Development section of HUD will release those limits at a later date.

2c

BOARD REPORT ITEM
HOUSING RESOURCE CENTER
APRIL 28, 2016

Report on the Amended 2016 State of Texas Consolidated Plan: One-Year Action Plan

BACKGROUND

The Texas Department of Housing and Community Affairs (“TDHCA”), Texas Department of Agriculture (“TDA”), and Department of State Health Services (“DSHS”) prepared the 2016 State of Texas Consolidated Plan: One-Year Action Plan (“Plan”) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State’s administration of the Community Development Block Grant Program (“CDBG”) by TDA, the Housing Opportunities for Persons with AIDS Program (“HOPWA”) by DSHS, and the Emergency Solutions Grant (“ESG”) Program and the HOME Investment Partnerships (“HOME”) Program by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2016. The Program Year began on February 1, 2016, and ends on January 31, 2017. The Plan also illustrates the State’s strategies in addressing the priority needs and specific goals and objectives identified in the 2015-2019 State of Texas Consolidated Plan.

The Plan was available for public comment from October 19, 2015, through November 19, 2015. Comment on the Plan was accepted in writing or directly at the public hearing held on Monday, November 16, 2015, in Austin. During this public comment period, TDHCA received four comments for which one change to the Plan was made. A list of the comments and staff responses is found in Attachment A of the Plan.

Additionally, in response to HUD’s Interim Final Rule on Changes to Accounting Requirements for CDBG, published in the *Federal Register* November 12, 2015, detail relating to CDBG program income retained by local subrecipients has been added to the Plan. This detail is provided as Attachment B and contains a description of each of these local subrecipient accounts, including the name of the local entity administering the funds, the amounts expected to be available during the program year, the eligible activity type(s) expected to be carried out with the program income, and the national objective(s) served with these funds.

Per 24 CFR §91.15(a)(1), the Plan should be submitted to HUD on December 15, 2015, which is at least 45 days before the start PY 2016. However, on August 13, 2015, the Department received written approval from HUD following a request to extend the submission date to January 15, 2016. That extension allowed the Department to incorporate new regulatory and reporting requirements into the Plan, while adhering to the State of Texas Citizen Participation Plan. With this extension, the final version of the Plan was to be submitted to HUD by January 15, 2016. However, on January 12, 2016, HUD instructed the Department to wait before submitting the 2016 OYAP, until further guidance was released.

On January 28, 2016, HUD released Notice CPD-16-01, advising the Department to wait until after the FY 2016 formula allocations are released before submitting the 2016 OYAP. HUD estimates that “grantees can expect to learn their FY 2016 formula program allocation amounts no later than mid-February.” The 2016 OYAP will be due to HUD within 60 days after the FY 2016 formula allocations have been announced.

At the Board meeting of February 25, 2016, staff received approval to release an Amended 2016 OYAP for public comment. Following the close of the public comment period, staff also received approval to submit the final Amended 2016 OYAP directly to HUD, staying within the 60 day period after the FY 2016 formula allocations have been announced, as required by Notice CPD-16-01.

Subsequently, staff made available for 30 days of public comment the amendments to the 2016 OYAP based on updated HUD guidance including:

- Change allocations amounts for all programs from estimated to final 2016 allocations;
- Update the HOME Method of Distribution;
- Update the definition of Chronically Homeless for ESG; and
- Add contingency provision language to the Citizen Participation Plan for estimated and actual allocation amounts for future years.

The Amended Plan was available for public comment from March 7, 2016, through April 5, 2016. During this public comment period, no comments were received.

The final Amended 2016 OYAP was submitted to HUD on Thursday, April 14, 2016.

2d

BOARD REPORT ITEM
ASSET MANAGEMENT DIVISION
APRIL 28, 2016

Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers

REPORT ITEM

This report contains information on Fiscal Year 2016 – 2nd Quarter (12/1/2015 to 2/29/2016).

- 17 LURA Amendments (14 Administratively Approved; 3 Board Approved)
- 11 Application Amendments (7 Administratively Approved; 4 Board Approved)
- 33 Extensions – 27 Cost Certification Extensions (All Administratively Approved), 1 Ten Percent Test Extension (Administratively Approved), and 5 Placed in Service Extensions (2 Waivers Administratively Approved & 3 Extensions Board Approved)
- 22 Ownership Transfers (All Administratively Approved)

Fiscal Year 2016 – 3rd Quarter information will be reported at the July 2016 meeting.

Land Use Restriction Agreement (LURA) Amendments

2016 Quarter 2

Administrative Approval

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
07605, 07605B	12/9/2015	North Shore Apartments	Houston	Sandra McBride	Swapping of Multiple Amenities in Appendix C and correction of BIN percentages in Appendix E
13026	12/9/2015	The Huntington at Sienna Plantation	Missouri City	Ofelia Elizondo	Correction of Visual/Hearing Accessible Unit Numbers in Addendum C
13115	12/9/2015	Abbington Meadows	Howe	Eric J. Buffenbarger	Revision to accessible units in Addendum C
13005	12/18/2015	Tower Village	Nacogdoches	Ofelia Elizondo	Amend Tenants with Special Needs section to include veterans and wounded warrior and Accessibility Standards section to include 20% of units required to meet accessibility standards for single family design
13112	12/18/2015	Liberty Trails Townhomes	Liberty Hill	Owen Dundee	Correction to HUB Language only - Board approval not required
13112	12/18/2015	Liberty Trails Townhomes	Liberty Hill	Owen Dundee	Amend Accessible Units and Applicable Fractions
13242	12/18/2015	Saige Meadows	Tyler	Jaclyn Gago	Correction to number of buildings in Addendum F

99207	12/18/2015	Columbia Greens	Houston	Brad Barnes	Reduce site acreage by 1.524 acres due to City of Houston purchasing tract of land for Bayou Greeways Park System
00006	1/11/2016	Villas of Hickory Estates	Balch Springs	Elisa Julien	Remove HUB requirement due to ownership transfer approved in 2000.
1001750, 12269	1/19/2016	Stonebridge of Kelsey Park	Lubbock	Jeffrey Spicer	Correction of accessible unit numbers
13016	1/20/2016	Westridge	Midland	Carrie W Adams	Correct the hearing and visual accessible unit numbers
03176	2/16/2016	Artisan at Salado Creek (fka San Miguel Apts)	San Antonio	Edgar Sandoval	Correct applicable fractions
13032	2/26/2016	StoneLeaf at Eustace	Eustace	Erica Steakley	Correct applicable fractions & unit seat-asides for 50% and 60% units
11404	2/29/2016	Buckeye Trail Commons	Dallas	Timothy J. Lott	Revised applicable fraction for 2 buildings & Corrected section that 20% of each unit type include accessible entry and one bedroom and one bedroom at the entry level

Board Approval

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
12252	12/30/2015	Gulf Coast Arms Apartments	Houston	Lee Zieben	Removal of HUB General Partner Requirement
94039	1/19/2016	Willow Pond Apartments	Dallas	Clark S. Willingham	Reduce number of low income units by five and correct the number of buildings and units to 38 and 386, respectively
94023, 545025645	1/27/2016	Creekwood Apartments	Houston	Todd Boone	Decrease in Acreage due to TxDOT expansion of Highway 290; Add ROFR and Handicapped Accessibility Requirements

Housing Tax Credit Application Amendments

2016 Quarter 2

Board Approved

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
14182	12/17/2015	Prairie Gardens	Abilene	Valentin DeLeon	Waiver of 10 TAC §10.101(a)(1) - related to floodplain requirements
13402	1/28/2016	Paddock at Norwood	Austin	Robert Onion	Greater than 3% Reduction in Common Area Square Footage
13033	2/25/2016	StoneLeaf at Fairfield	Fairfield	Mike Sugrue/Erica Steakley	Greater than 3% Reduction in Common Area Square Footage
15281	2/25/2016	Cayetano Villas of La Vernia	La Vernia	Lora Myrick	Reduction in acreage and modification of density by at least 5% due to acreage being dedicated as a public right of way

Administratively Approved

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
13110	12/11/2015	El Dorado Green Apartments	Friendswood	Lily Kavthekar	Correction of site acreage from 13.40 to 13.3089 acres
03463, 03463B	12/29/2015	Artisan at Rush Creek	Arlington	Elizabeth Kirkpatrick	Substition of limited access gates and public telephone with common area Wi-Fi and secured bicycle parking.
12271	12/29/2015	Silversage Point at Western Center	Fort Worth	John M. Wells	Development site reduced by 0.32 acre due to Right of Way dedications.

Administratively Approved

Dev. No.	Date of Approval	Development Name	City	Owner Name/Contact	Type of Amendment
92006, 135395589	1/8/2016	Redbird Trails Apartments	Dallas	Tena Cavasos	Elimination of jacuzzi, sauna, and volleyball court represented in the application. Also requested waiver of amendment fee.
12083	1/14/2016	Harmon Villas	Fort Worth	Joseph Agumadu	Change in the number of bathrooms and slight increase in net rentable square footage.
13201, 1002027	1/28/2016	The Trails at Carmel Creek	Hutto	Valentin DeLeon	Change in Unit Mix (One Less One Bedroom and One More Two Bedroom Built)
13032	2/25/2016	StoneLeaf at Eustace	Eustace	Erica Steakley	Greater than 3% Reduction in Common Area Square Footage

Housing Tax Credit Extensions

2016 Quarter 2

Administrative

Dev. No.	Date of Approval	Development Name	City	Region	Type of Extension	Original Deadline	Approved Deadline
13144	12/28/2015	Mariposa at Pecan Park	La Porte	6	Cost Certification	1/15/2016	4/15/2016
13201, 1002027	12/29/2015	The Trails at Carmel Creek	Hutto	7	Cost Certification	1/15/2016	3/15/2016
13232, 1002029	2/9/2016	Pine Lake Estates	Nacogdoches	5	Cost Certification	1/15/2016	4/15/2016
13270	12/14/2015	Bella Terra	Brownsville	11	Placement in Service Waiver - only 1 unit per building required	12/31/2015	12/31/2015
13608, 13608B	12/28/2015	The Landings at Marine Creek	Fort Worth	3	Cost Certification	1/15/2016	4/1/2016
12083	2/8/2016	Harmon Villas	Fort Worth	3	Cost Certification	4/15/2015	1/22/2016
12415	12/29/2015	Gardens at San Juan Square (San Juan III)	San Antonio	9	Cost Certification	1/15/2016	4/1/2016
13167	12/22/2015	Freedoms Path at Kerrville	Kerrville	9	Placement in Service Waiver - only 1 unit per building required	12/31/2015	12/31/2015
13193	12/29/2015	Balcones Lofts	Balcones Heights	9	Cost Certification	1/15/2016	4/15/2016

13004, 1002025	12/21/2015	Stone Creek Apartments	Kilgore	4	Cost Certification	1/15/2016	4/15/2016
11003	2/17/2016	Highpoint Senior Living	Dallas	3	Cost Certification	1/15/2015	8/21/2015
12332	2/16/2016	Parc East Apartments	Mesquite	3	Cost Certification	1/15/2016	3/15/2016
13152	1/5/2016	Palladium Aubrey	Aubrey	3	Cost Certification	1/15/2016	3/15/2016
14404, 95003	2/16/2016	Park at Cliff Creek	Dallas	3	Cost Certification	1/15/2016	5/15/2016
13262	1/14/2016	Paso Fino Apartment Homes	San Antonio	9	Cost Certification	1/15/2016	4/15/2016
13003, 1002024	12/28/2015	Crossing at Oak Grove	Kerens	3	Cost Certification	1/15/2016	4/14/2016
13082	12/28/2015	Woodland Creek Apartments	Corpus Christi	10	Cost Certification	1/15/2016	3/31/2016
13180, 1002030	12/29/2015	Mission Village of Pecos	Pecos	12	Cost Certification	1/15/2016	4/15/2016
14601, 14601B	2/16/2016	Laredo Hill	Big Spring	12	Cost Certification	1/15/2016	4/15/2016
14297	12/29/2015	Casitas Los Olmos	Raymondville	11	3rd 10% Test Extension	12/14/2015	12/17/2015
13187	12/30/2015	Barron's Branch	Waco	8	Cost Certification	1/15/2016	4/15/2016

13058, 1002031	12/30/2015	Evergreen at Arbor Hills	Carrollton	3	Cost Certification	1/15/2016	4/15/2016
13102	12/28/2015	Reserve at McAlister	Fort Worth	3	Cost Certification	1/15/2016	2/12/2016
14600, 14600B	2/16/2016	Decker Place	Marshall	4	Cost Certification	1/15/2016	4/15/2016
13223	12/28/2015	Campanile at Jones Creek	Richmond	6	Cost Certification	1/15/2015	4/15/2015
13183	12/28/2015	Newport Village	Crosby	6	Cost Certification	1/15/2016	4/15/2016
13139, 1002119	12/30/2015	Stonebridge of Plainview	Plainview	1	Cost Certification	1/15/2016	4/30/2016
13196	12/29/2015	Emerald Village	San Antonio	9	Cost Certification	1/15/2016	4/1/2016
14193	1/14/2016	Villas at West Mountain	El Paso	13	Cost Certification	1/15/2016	4/30/2016
13145, 1002032	2/16/2016	Mariposa at Elk Drive	Burleson	3	Cost Certification	1/15/2016	4/15/2016

Board

Dev. No.	Date of Approval	Development Name	City	Region	Type of Extension	Original Deadline	Approved Deadline
13201, 1002027	12/17/2015	The Trails at Carmel Creek	Hutto	7	Placement in Service	12/31/2015	2/29/2016

13240	12/17/2015	Summit Place	Dallas	3	Placement in Service	12/31/2015	1/30/2016
13117	12/17/2015	The Estates at Ellington	Houston	6	Placement in Service	12/31/2015	2/29/2016

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Housing Tax Credit Program Ownership Transfers

2016 Quarter 2

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Person/Entity Departing	New Person/Entity	Type of Ownership Change
92006, 135395589	12/9/2015	Redbird Trails Apartments	Dallas	None	Redbird Trails Apartments LLC	Affiliate -Acknowledgment
99126	12/15/2015	Sunset Arbor Townhomes	Abilene	Sunset Arbor Ltd.	Townhomes at Sunset Arbor, LP	Sale of Property
12252	12/17/2015	Gulf Coast Arms Apartments	Houston	J. Allen Management Co., Inc.	AHG Properties, LLC	Removal of HUB General Partner
04026	12/18/2015	Oak Timbers-White Settlement II	White Settlement	RMF Contractors, Inc.	Sendero Senior Services, LLC	GP change
01415	12/28/2015	Starcrest Apartments aka Washington Manor	Beaumont	Starcrest Apartments, Ltd.	DM Starcrest, LTD	Sale to Non-Affiliate
97021	12/30/2015	Brazos Village Apartments	Waco	Brazos Village Partners, L.P.	Brazos Village OTM Harmony LP	Sale of Property
93038	1/14/2016	Spanish Park (FKA Cooper Crossing) (AKA Hunts View Apartments)*	Arlington	Danny Gillean Sr. and Linda Gillean	Sondra D. Gillean	Addition of spouse of deceased member
93040	1/14/2016	Garden Gate Apartments-Ft. Worth	Fort Worth	Juniper GG Fort Worth, LLC	AOF Garden Gate FW, LLC	Sale of Property
93041	1/14/2016	Garden Gate Apartments-Plano	Plano	Juniper GG Plano, LLC	AOF Garden Gate Plano, LLC	Sale of Property
01152	1/22/2016	Parkway Senior Apartments	Pasadena	Parkway Senior GP Corporation	Parkway Senior GP, LLC	Change in GP Legal Entity Form

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Person/Entity Departing	New Person/Entity	Type of Ownership Change
93110	2/2/2016	The Springs (FKA Spring Glen)	Fort Worth	Gulf Coast Housing Partnership, Inc.	GCHP-Texas, Inc.	Affiliate - Acknowledgment
93109	2/2/2016	The Springs (FKA Spring Hill)	Fort Worth	Gulf Coast Housing Partnership, Inc.	GCHP-Texas, Inc.	Affiliate - Acknowledgment
04611, 04611B	2/5/2016	Alta Gardens Apartments	Houston	Wood Alta Cullen Limited Partnership	Vesta Equity Cullen LLC	Change in General Partner
00179	2/9/2016	Highland Oaks Apartments	Floresville	Floresville Apartments GP, A Texas Corporation	Floresville Apartments GP, LLC	Change in Legal Entity Type
97041	2/16/2016	Villas At Pine Lake	Houston	Rodriguez Affordable Housing, Inc.	Wentwood Pine Lake GP, Inc.	Change in General Partner
98010	2/16/2016	Villas on Woodforest	Houston	Western Rim Investors 98-1, LLC	Wentwood Woodforest GP, Inc.	Change in General Partner
99020	2/16/2016	Houston Villas in the Pines	Houston	Western Rim Investors 99-1, LLC	Wentwood Pines GP, Inc.	Change in General Partner
97040	2/16/2016	Fort Worth Villas By The Lake	Fort Worth	Rodriguez Affordable Housing, Inc.	Wentwood Lake GP, Inc.	Change in General Partner
95090	2/16/2016	Lexington Arms	Waxahachie	Lexington Arms, Ltd.	Lexington Housing, LLC	Sale of Property
11004	2/16/2016	North Court Villas	Frisco	Stewart Creek Villas GP, LLC	PK Stewart Creek Villas GP, LLC	Change in General Partner
01094	2/24/2016	South Cooperstown Apartments	El Paso	Robert Bowling, III and Gregory Bowling	N/A	Voluntary removal of 2 persons from the General Partner entity

ADMINISTRATIVELY APPROVED

Dev. No.	Date of Approval	Development Name	City	Person/Entity Departing	New Person/Entity	Type of Ownership Change
04609B, 04609	2/29/2016	Creekside Villas (fka Pleasant Village)	Dallas	Pleasant Village Limited Partnership	378 Creekside Apartment LLC	Sale of Property

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BOARD REPORT ITEM
FINANCIAL ADMINISTRATION DIVISION
APRIL 28, 2016

Report on the Department's 2nd 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 that 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 \$786,929,816, of which \$755,880,400 is not subject to the PFIA. This report addresses the remaining \$31,049,416 (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. These investments 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 29, 2016), with an effective interest rate of 0.23%. These investments 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 ("MCC") Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate ("BMIR") Program.
- 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 Multifamily Rules. 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 format 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 and 2.

During the 2nd Quarter, as it relates to the investments covered by the PFIA, the carrying value increased by \$1,499,520 (See Page 1) for a total of \$31,049,416. The increase is described below by fund groups.

General Fund: The General Fund decreased by \$257,145. This consists primarily of \$466,726 received in bond administration fees, and \$133,744 in MCC Fees. Disbursements included \$829,925 transferred to fund the operating budget and \$118,963 in bond related expenses.

Housing Trust Fund: The Housing Trust Fund increased by \$423,505. This consists primarily of \$931,772 received in loan repayments. Disbursements included \$387,850 for loans and grants.

Compliance: Compliance funds increased \$2,043,091. This consists primarily of \$3,952,439 received in compliance fees, offset by disbursements of \$1,830,151 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds decreased by \$709,933. This consists primarily of \$873,887 received in fees related to tax credit activities, offset by disbursements of \$1,515,661 transferred 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 29, 2016**



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Supplemental Management Report
Quarter Ending February 29, 2016

Investment Type	FAIR VALUE	CARRYING	CHANGE IN CARRYING VALUE				CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED
	(MARKET) @ 11/30/15	VALUE @ 11/30/15	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	VALUE @ 2/29/16	(MARKET) @ 2/29/16	IN FAIR VALUE (MARKET)	INT RECVBL @ 2/29/16	
NON-INDENTURE RELATED:											
General Fund Mortgage-Backed Securities	502,239.68	486,409.26			(35,193.17)		451,216.09	466,559.78	(486.73)	2,249.08	
General Fund Repurchase Agreements	7,965,741.00	7,965,741.00	783,405.89	(1,005,357.24)			7,743,789.65	7,743,789.65	0.00	49.48	
Housing Trust Fund Repurchase Agreements	5,365,687.90	5,365,687.90	1,104,754.22	(681,248.85)			5,989,193.27	5,989,193.27	0.00	38.53	
Compliance Repurchase Agreements	5,985,718.98	5,985,718.98	2,193,444.17	(150,352.85)			8,028,810.30	8,028,810.30	0.00	51.30	
Housing Initiatives Repurchase Agreements	9,546,339.22	9,346,339.22	318,026.82	(1,027,959.35)			8,836,406.69	8,836,406.69	0.00	56.66	
NON-INDENTURE RELATED TOTAL	29,565,726.78	29,549,896.36	4,399,631.10	(2,864,918.29)	(35,193.17)	0.00	31,049,416.00	31,064,759.69	(486.73)	2,445.05	0.00
TOTAL	810,802,441.38	757,143,953.87	83,324,665.09	(31,003,906.08)	(22,534,897.22)	0.00	786,929,815.66	843,938,086.84	3,349,783.67	2,434,881.73	0.00

(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:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 12, 2016
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 20, 2015

	Date 4/12/16
David Cervantes, Chief Financial Officer	
	Date 4/18/16
Monica Galuski, Director of Bond Finance	

**Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending February 29, 2016**

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 11/30/15	Beginning Market Value 11/30/15	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending Carrying Value 2/29/16	Ending Market Value 2/29/16	Change In Market Value	Recognized Gain
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	1,628,368.93	1,628,368.93	8,691.40				1,637,060.33	1,637,060.33		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	21,797.38	21,797.38	14,495.08				36,292.46	36,292.46		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	40,790.61	40,790.61		(6,978.39)			33,812.22	33,812.22		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	787,389.88	787,389.88	134,221.83				921,611.71	921,611.71		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	1,900,341.64	1,900,341.64		(649,161.74)			1,251,179.90	1,251,179.90		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	659,168.64	659,168.64	312,513.99				971,682.63	971,682.63		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	259,076.95	259,076.95		(17,877.27)			241,199.68	241,199.68		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	634,945.85	634,945.85		(331,339.84)			303,606.01	303,606.01		
Repo Agmt	General Fund	0.23	02/29/16	03/01/16	2,033,861.12	2,033,861.12	313,483.59				2,347,344.71	2,347,344.71		
GNMA	General Fund	7.50	08/31/89	07/20/18	49,736.16	52,180.69			(5,207.42)		44,528.74	46,328.15	(645.12)	
GNMA	General Fund	7.50	10/31/89	09/20/18	75,013.85	78,336.21			(8,406.42)		66,607.43	69,229.76	(700.03)	
GNMA	General Fund	7.50	01/01/90	11/20/18	31,024.12	31,497.86			(3,613.97)		27,410.15	27,706.18	(177.71)	
GNMA	General Fund	7.50	01/01/90	12/20/18	38,182.03	39,522.60			(3,803.54)		34,378.49	35,214.23	(504.83)	
GNMA	General Fund	7.50	02/27/90	12/20/18	5,383.56	5,402.51			(442.50)		4,941.06	4,958.70	(1.31)	
GNMA	General Fund	7.50	03/30/90	01/20/19	54,810.92	57,645.74			(5,275.18)		49,535.74	51,865.90	(504.66)	
GNMA	General Fund	7.50	04/26/90	03/20/19	26,387.22	26,674.05			(2,593.09)		23,794.13	24,038.02	(42.94)	
GNMA	General Fund	7.50	05/29/90	04/20/19	51,368.24	53,905.32			(4,922.54)		46,445.70	48,395.03	(587.75)	
GNMA	General Fund	2.65	01/29/13	12/15/42	45,529.84	45,079.55			(334.81)		45,195.03	45,713.42	968.68	
GNMA	General Fund	3.20	01/29/13	10/15/42	108,973.32	111,995.15			(593.70)		108,379.62	113,110.39	1,708.94	
General Fund Total					8,452,150.26	8,467,980.68	783,405.89	(1,005,357.24)	(35,193.17)	0.00	8,195,005.74	8,210,349.43	(486.73)	0.00
Repo Agmt	Housing Trust Fund	0.23	02/29/16	03/01/16	122,136.34	122,136.34	9,394.82				131,531.16	131,531.16		
Repo Agmt	Housing Trust Fund	0.23	02/29/16	03/01/16	34.50	34.50	62.18				96.68	96.68		
Repo Agmt	Housing Trust Fund	0.23	02/29/16	03/01/16	115,638.57	115,638.57	103,351.74				218,990.31	218,990.31		
Repo Agmt	General Revenue Appn	0.23	02/29/16	03/01/16	870.24	870.24	751.89				1,622.13	1,622.13		
Repo Agmt	General Revenue Appn	0.23	02/29/16	03/01/16	197,797.19	197,797.19	185,732.78				383,529.97	383,529.97		
Repo Agmt	General Revenue Appn	0.23	02/29/16	03/01/16	1,053,874.06	1,053,874.06		(253,931.35)			799,942.71	799,942.71		
Repo Agmt	General Revenue Appn	0.23	02/29/16	03/01/16	64,532.05	64,532.05	5,460.81				69,992.86	69,992.86		
Repo Agmt	Housing Trust Fund-GR	0.23	02/29/16	03/01/16	704,402.73	704,402.73		(408,485.09)			295,917.64	295,917.64		
Repo Agmt	Housing Trust Fund-GR	0.23	02/29/16	03/01/16	1,196,600.00	1,196,600.00					1,196,600.00	1,196,600.00		
Repo Agmt	Bootstrap -GR	0.23	02/29/16	03/01/16	3,342.08	3,342.08		(2,332.41)			1,009.67	1,009.67		
Repo Agmt	Bootstrap -GR	0.23	02/29/16	03/01/16	399,460.14	399,460.14					399,460.14	399,460.14		
Repo Agmt	Bootstrap -GR	0.23	02/29/16	03/01/16	1,100,000.00	1,100,000.00	800,000.00				1,900,000.00	1,900,000.00		
Repo Agmt	Contract for Deed Conversion	0.23	02/29/16	03/01/16	357,000.00	357,000.00		(16,500.00)			340,500.00	340,500.00		
Repo Agmt	Contract for Deed Conversion	0.23	02/29/16	03/01/16	250,000.00	250,000.00					250,000.00	250,000.00		
Housing Trust Fund					5,565,687.90	5,565,687.90	1,104,754.22	(681,248.85)	0.00	0.00	5,989,193.27	5,989,193.27	0.00	0.00
Repo Agmt	Multi Family	0.23	02/29/16	03/01/16	1,075,740.80	1,075,740.80		(150,352.85)			925,387.95	925,387.95		
Repo Agmt	Multi Family	0.23	02/29/16	03/01/16	308,945.08	308,945.08	265,035.07				573,980.15	573,980.15		
Repo Agmt	Low Income Tax Credit Prog.	0.23	02/29/16	03/01/16	4,601,033.10	4,601,033.10	1,928,409.10				6,529,442.20	6,529,442.20		
Compliance Total					5,985,718.98	5,985,718.98	2,193,444.17	(150,352.85)	0.00	0.00	8,028,810.30	8,028,810.30	0.00	0.00
Repo Agmt	Asset Management	0.23	02/29/16	03/01/16	1,152,953.03	1,152,953.03		(305,212.41)			847,740.62	847,740.62		
Repo Agmt	Low Income Tax Credit Prog.	0.23	02/29/16	03/01/16	763,350.90	763,350.90	318,026.82				1,081,377.72	1,081,377.72		
Repo Agmt	Low Income Tax Credit Prog.	0.23	02/29/16	03/01/16	7,228,446.50	7,228,446.50		(711,389.48)			6,517,057.02	6,517,057.02		
Repo Agmt	Low Income Tax Credit Prog.	0.23	02/29/16	03/01/16	401,588.79	401,588.79		(11,357.46)			390,231.33	390,231.33		
Housing Initiatives					9,546,339.22	9,546,339.22	318,026.82	(1,027,959.35)	0.00	0.00	8,836,406.69	8,836,406.69	0.00	0.00
Total Investment Summary					29,549,896.36	29,565,726.78	4,399,631.10	(2,864,918.29)	(35,193.17)	0.00	31,049,416.00	31,064,759.69	(486.73)	0.00

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BOARD REPORT ITEM
BOND FINANCE DIVISION
APRIL 28, 2016

REPORT ITEM

Report on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures.

BACKGROUND

- The Department's Investment Policy excludes 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 details the types of investments, maturity dates, carrying (face amount) values, and fair market values 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 increased by \$28 million (see page 3) for a total of \$755,880,400. The increase reflects one new bond issue in both the Single Family and Multifamily Trust Indentures.

The portfolio consists of those investments described in the attached Bond Trust Indenture Supplemental Management Report.

	<u>Beginning Quarter</u>	<u>Ending Quarter</u>
Mortgage Backed Securities ("MBS")	81%	82%
Guaranteed Investment Contract/ Investment Agreement ("GIC/IA")	5%	5%
Repurchase Agreements	7%	7%
Money Markets and Mutual Funds	7%	6%

The 1% increase in MBS resulted from the issuance of single family bonds and the associated acquisition of new MBS. The 1% decrease in Money Markets and Mutual Funds is the result of the normal flow of funds.

The portfolio activity for the quarter:

- \$31.5 million in MBS were purchased in conjunction with the issuance of Single Family 2016 Series A. \$23.1 million in MBS were purchased in conjunction with the issuance of Multifamily 2015 Series Williamsburg Apartments. The maturities in MBS this quarter were \$22.5 million which represents loan repayments or payoffs.

	2nd Qtr	3rd Qtr	4th Qtr	1st Qtr	2nd Qtr	
	FY 15	FY 15	FY 15	FY 16	FY 16	Total
Purchases	-	-	-	\$ 19,835,271	\$ 54,617,718	\$ 74,452,989
Sales	-	-	-	-	-	-
Maturities	\$ 27,713,951	\$ 27,472,359	\$ 30,958,949	\$ 27,975,967	\$ 22,499,704	\$ 136,620,930
Transfers				\$ 9,009,061	\$ -	\$ 9,009,061

- The process of valuing investments at fair 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 (MBS) but holds them until maturity.
- The fair market value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) increased \$3.4 million (see pages 3 and 4), with fair market value being greater than the carrying value. The national average for a 30-year fixed rate mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of February 28, 2016, was 3.62%, down from 3.95% at the end of November 2015. There are various factors that affect the fair market 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 the Department's investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is of more importance than the assessed 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 5 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indenture with assets greater than liabilities in a range from 99.32% to 169.81% 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 Management Report
 Quarter Ending February 29, 2016

	FAIR VALUE	CARRYING	CHANGE IN CARRYING VALUE			CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED
	(MARKET)	VALUE	ACCRETION /	AMORTIZATION/	MATURITIES	VALUE	(MARKET)	IN FAIR VALUE	INT RECVBL	
	@ 11/30/15	@ 11/30/15	PURCHASES	SALES		@ 2/29/16	@ 2/29/16	(MARKET)	@ 2/29/16	GAIN
INDENTURE RELATED:										
Single Family	419,087,777.43	387,423,214.89	46,749,563.07	(9,118,836.89)	(13,441,049.64)	411,612,891.43	445,210,284.08	1,932,830.11	1,393,521.74	
RMRB	267,067,850.25	248,463,245.43	1,370,856.05	(5,902,033.26)	(8,750,399.39)	235,181,668.83	254,778,984.54	992,710.89	803,509.81	
CHMRB	4,357,179.11	4,041,625.85	6.27	(308,546.90)	(159,477.65)	3,573,607.57	3,883,535.43	(5,625.40)	220,223.94	
Taxable Mortgage Program	7,331,097.76	7,106,953.16	80,994.62	(180,628.57)	(58,973.46)	6,948,345.75	7,224,976.41	52,486.06	15,181.19	
Multi Family	83,392,810.05	80,559,018.18	30,723,613.98	(12,628,942.17)	(89,803.91)	98,563,886.08	101,775,546.69	377,868.74	0.00	
	781,236,714.60	727,594,057.51	78,925,033.99	(28,138,987.79)	(22,499,704.05)	755,880,399.66	812,873,327.15	3,350,270.40	2,432,436.68	0.00



* With regards to the Multi Family Indenture, the Department is carrying \$98,563,886 of investments pledged as reserves by participating entities. The Department is carrying these investments with their corresponding liability purely for tracking the flow of funds.

(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:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 12, 2016

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 20, 2015

	Date 4/18/16
David Cervantes, Chief Financial Officer	
	Date 4/18/16
Monica Galuski, Director of Bond Finance	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending February 29, 2016



INVESTMENT TYPE	FAIR VALUE (MARKET) @ 11/30/15	CARRYING VALUE @ 11/30/15	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	CARRYING VALUE @ 2/29/16	FAIR VALUE (MARKET) @ 2/29/16	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
INDENTURE RELATED:									
Mortgage-Backed Securities	643,325,112.32	589,682,455.23	54,617,718.40		(22,499,704.05)	621,800,469.58	678,793,397.07	3,350,270.40	
Guaranteed Inv Contracts	38,291,808.45	38,291,808.45	1,531,384.01	(4,428,705.77)		35,394,486.69	35,394,486.69		
Investment Agreements	4,157,936.39	4,157,936.39	120,549.18	(3,039,460.26)		1,239,025.31	1,239,025.31		
Treasury-Backed Mutual Funds	52,801,566.68	52,801,566.68	7,453,064.80	(12,207,360.24)		48,047,271.24	48,047,271.24		
Repurchase Agreements	42,660,290.76	42,660,290.76	15,202,317.60	(8,463,461.52)		49,399,146.84	49,399,146.84		
	781,236,714.60	727,594,057.51	78,925,033.99	(28,138,987.79)	(22,499,704.05)	755,880,399.66	812,873,327.15	3,350,270.40	0.00

(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.

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	Date 4/18/16
David Cervantes, Chief Financial Off	
	Date 4/18/16
Monica Galuski, Director of Bond Finance	

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of February 29, 2016

	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
PARITY COMPARISON:						
PARITY ASSETS						
Cash	\$ 847,971	\$ 7,278			\$ 115,822	\$ 971,071
Investments ⁽¹⁾	\$ 59,994,654	\$ 21,891,046	\$ 212,068	\$ 2,333,985	\$ 96,627,371	\$ 181,059,125
Mortgage Backed Securities ⁽¹⁾	\$ 351,330,617	\$ 213,479,635	\$ 3,356,014	\$ 4,614,360	\$ -	\$ 572,780,626
Loans Receivable ⁽²⁾	\$ 597,311				\$ 951,447,974	\$ 952,045,285
Accrued Interest Receivable	\$ 1,391,465	\$ 803,510	\$ 20,224	\$ 10,220	\$ 9,895,928	\$ 12,121,347
TOTAL PARITY ASSETS	\$ 414,162,018	\$ 236,181,469	\$ 3,588,306	\$ 6,958,566	\$ 1,058,087,095	\$ 1,718,977,454
PARITY LIABILITIES						
Bonds Payable ⁽¹⁾	\$ 362,945,000	\$ 198,915,000	\$ 2,100,000		\$ 951,382,428	\$ 1,515,342,428
Accrued Interest Payable	\$ 4,057,348	\$ 1,216,222	\$ 13,100		\$ 9,987,526	\$ 15,274,196
Other Non-Current Liabilities ⁽³⁾					\$ 103,971,162	\$ 103,971,162
TOTAL PARITY LIABILITIES	\$ 367,002,348	\$ 200,131,222	\$ 2,113,100	\$ -	\$ 1,065,341,116	\$ 1,634,587,786
PARITY DIFFERENCE	\$ 47,159,670	\$ 36,050,247	\$ 1,475,206	N/A	\$ (7,254,021)	\$ 84,389,667
PARITY	112.85%	118.01%	169.81%	N/A	99.32%	105.16%

(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).

ACTION ITEMS

3a

BOARD REPORT ITEM
INTERNAL AUDIT DIVISION
April 28, 2016

Report of the Meeting of the Audit Committee

REPORT ITEM

Verbal report.

BACKGROUND

3b

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
An Internal Audit of the Real Estate Analysis (REA) Division
Audit Report # 16-002

Executive Summary

The Office of Internal Audit (OIA) evaluated the underwriting process performed by REA. Based on the fieldwork performed between March 1, 2016 and April 4, 2016, OIA concludes that the underwriting process is generally performed accurately and according to applicable rules, however, the following opportunities for improvement were identified.

Findings

1. Underwriting reports are not always completed and posted prior to the decision deadline for the Competitive 9% LIHTC Award Allocation. As a result, the Governing Board and other stakeholders do not have the benefit of the comprehensive analytical reports when making their decision regarding affordable housing developments.
2. REA deviated from the *Underwriting and Loan Policy Rules* related to:
 - Presenting applications to EARAC when a significant confluence of concerns was identified and
 - Review and evaluation of personal credit reports when evaluating the overall capacity of the development team.

Recommendations

1. REA should complete the underwriting reports and ensure the reports are available to stakeholders including the TDHCA Governing Board before the allocation and funding decisions are made.
2. REA should comply with the *Underwriting and Loan Policy* rules in the Texas Administrative Code. If the rules, or portions thereof, are no longer relevant or applicable, the rules should be revised accordingly.

Response:

*Management agreed with our recommendations.
Detailed responses are included in the body of the audit report.*

Responsible Area:

Division Director and Division Manager

Objective, Scope and Methodology

The audit of the REA was identified in the Fiscal Year 2016 Annual Audit Plan. Based on an assessment of risks and controls, the following audit objectives were developed:

- to examine and assess the Department's underwriting process and
- to determine if the underwriting is performed according to applicable rules and completed in a timely manner.

The audit scope included underwriting reports and underlying analysis performed by REA for HOME Multifamily applications, Competitive Housing Tax Credit Applications and 4% Housing Tax Credit Applications during calendar year 2015.

The audit methodology included gaining an understanding of the Division, its activities and the underwriting process by interviewing employees and reviewing documentation. OIA performed a risk assessment of the critical points in the process to develop the audit objectives and focus audit resources. OIA identified relevant criteria for evaluating the underwriting process. OIA tested a judgmental sample of underwriting reports and the underlying analysis to evaluate whether the underwriting process was performed accurately, completely and in a timely manner. OIA summarized the results in the Report # 16-002 that follows.



Mark Scott, CPA, CIA, CISA, CFE, MBA
Director, Internal Audit

4/19/16

Date Signed



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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GOVERNOR

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April 19, 2016

Writer's direct phone # 512.475.3813

Email: mark.scott@tdhca.state.tx.us

RE: An Internal Audit of the Real Estate Analysis Division

To: Chairman J. Paul Oxer and the Board Members of the Texas Department of Housing and Community Affairs

Dear Chairman Oxer and Board Members,

This report presents the results of the internal audit of the Texas Department of Housing and Community Affairs Real Estate Analysis Division (REA or Division).

Executive Summary

The Office of Internal Audit (OIA) evaluated the underwriting process performed by REA. Based on the fieldwork performed between March 1, 2016 and April 4, 2016, OIA concludes that the underwriting process is generally performed accurately and according to applicable rules, however, the following opportunities for improvement were identified:

1. REA should complete the underwriting reports and ensure the reports are available to stakeholders including the TDHCA Governing Board before the allocation and funding decisions are made.
2. REA should comply with the *Underwriting and Loan Policy* rules in the Texas Administrative Code (Title 10, Part 1, Chapter 10, Subchapter D). If the rules or portions thereof, are no longer relevant or applicable, the rules should be revised accordingly.

During the course of this audit, OIA noted an inherent risk that exists related to the current process for obtaining market analyses from analysts that are engaged and compensated by the applicant.

OIA would like to recognize REA's development of a tool that may enhance the presentation of multifamily activity application information by summarizing key components on a two page form.

Objective, Scope and Methodology

The audit of the REA was identified in the Fiscal Year 2016 Annual Audit Plan. Based on an assessment of risks and controls, the following audit objectives were developed:

- to examine and assess the Department's underwriting process and
- to determine if the underwriting is performed according to applicable rules and completed in a timely manner.



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Real Estate Analysis Overview

The Real Estate Analysis Division provides the TDHCA Governing Board and staff with comprehensive analytical reports necessary to make well informed decisions for funding of affordable housing developments.

The Division is responsible for analyzing feasibility of proposed multifamily housing activities and preparing a credit underwriting analysis report that will be used by the TDHCA Governing Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of the development feasibility.

The Underwriting Process

Applications for allocations of low income housing tax credits (LIHTC) or multifamily funding awards are submitted to the Department for consideration. The applications submitted for review and evaluation may include requests for:

- Competitive 9% Low Income Housing Tax Credits
- 4% Low Income Housing Tax Credits
- Multifamily HOME only funding
- Combination of Competitive Tax Credit Allocation and HOME funding

The applications are reviewed by the respective multifamily program area, for example 9% LIHTC, 4% LIHTC, Multifamily HOME. Not all applications received by the Department are submitted to REA for review. Only the highest scoring LIHTC applications are forwarded to REA. Multifamily HOME applications that have passed the 1st and 2nd level program reviews are transferred to REA for review.

REA is notified by the respective program area when an application is ready to be reviewed and evaluated by REA. REA leadership assigns the application to a real estate analyst. Assignments are made based on work load. Management tries to assign deals from the same developer to the same underwriter to gain efficiencies.

Underwriting can mean different things to people in various industries. For purposes of this report, the term underwriting is defined as analyzing the feasibility of proposed multifamily housing activities.

The comprehensive review performed by the REA analyst includes evaluation of the affordable housing activity using the established guidelines published in the *Underwriting and Loan Policy Rules* and other relevant requirements which could include the qualified allocation plan (QAP) or HOME rules and regulations depending on the type of award or funding requested. Factors evaluated by the real estate analyst include:

- Operating feasibility
- Income (rents and miscellaneous incomes adjusted for vacancy and collection losses)
- Expenses (general and administrative expense, management fees, payroll expense, repairs and maintenance, utility expense, et cetera).
- Net Operating Income
- Debt Coverage Ratio
- Total Housing Development Costs
- Development Team Capacity
- Other Underwriting Considerations

In addition, the analyst will review the environmental site assessment, market analysis and property condition assessment as applicable.

One of the tools used for the evaluation is the underwriting analysis workbook, commonly referred to as the template and sometimes referred to as the underwriting report. The underwriting analysis workbook is a standardized template that has been developed by REA management and staff to include the key information and facilitate evaluation of financial factors and market demand to assess the feasibility of the proposed deal.

The actual underwriting report is created using the underwriting analysis workbook. Once the real estate analyst performs their review and evaluation of the application, it is submitted to REA-leadership for review. Once the review is complete, the underwriting report, in portable document format (pdf), is posted to the Department's public web page.

The posted report includes the recommended award of funds or housing credit allocation amount. Of course, the report may recommend that no award be made or that the amount of the award or the credit allocation be reduced. A recommendation for a reduced allocation could occur because the Internal Revenue Code requires that tax credits allocated to a development not exceed the amount necessary to assure feasibility.

In addition to the underwriting performed by REA on the original application packet, REA may review the feasibility of the project at other key milestones. For example, REA may perform an in-depth review of the development data when the carryover documentation is submitted to the Department or when the 10% Test documentation is submitted to the Department. A review by REA may be performed to ensure specific conditions required during the initial underwriting are satisfied by the applicant. Another review by REA may be necessary if changes to the original proposal are made.

Evaluation of the Underwriting Process

OIA judgmentally selected a sample of 10 underwriting reports from the population of 97 applications transferred to REA for review. A sample size of 10 represents 10.3% of the population. Because the population of applications includes multiple program types (4% LIHTC, 9% LIHTC and HOME) and multiple activity types (new construction or acquisition and rehabilitation), the sample was selected to include a proportionate representation of each type of program and activity. Additionally, the sample was selected with care to include applications reviewed by each of the Division's real estate analysts.

The sample items were tested to determine if the reports were prepared accurately, completely and in a timely manner. The testing results indicate that the underwriting reports are prepared accurately and completely and are generally prepared in compliance with applicable rules and requirements.

However, the underwriting reports are not always available in a timely manner. More specifically, of the ten sample items tested, seven items were for the 9% Competitive Housing Tax Credit Program. According to the 2015 Program Calendar for the Competitive LIHTC, the final awards would be made in July. Of the seven

competitive applications reviewed, four of the reports (57%) were not completed and posted in time for the July 30, 2015 Governing Board Meeting. Therefore tax credit allocation awards were made without the benefit of the comprehensive analysis performed by REA.

It is important to note that the recommendations for award allocations made at the July 30 meeting were conditioned upon the completion of underwriting, the imposing of all conditions of underwriting, the imposing of the conditions recommended by Executive Award and Review Committee (EARAC).

Of the reports that were posted after the 7/30/2015 board meeting, the smallest number of business days lapsed was 32. The largest number of business days from the award date to the report completion date was 69. In this case, the completed underwriting report was posted on 11/3/2015, which is one day after the carryover documentation delivery deadline.

Finding – Underwriting reports are not always completed and posted prior to the decision deadline for the Competitive 9% LIHTC Award Allocation. As a result, the Governing Board and other stakeholders do not have the benefit of the comprehensive analytical reports when making their decision regarding affordable housing developments.

Auditor recommendation - REA should complete the underwriting reports and ensure the reports are available to stakeholders including the TDHCA Governing Board before the allocation and funding decisions are made.

Management Response

The Real Estate Analysis Division ("REA") agrees that underwriting reports relating to awards should be published prior to TDHCA Governing Board consideration of allocation and funding decisions. Management will undertake the following to implement this recommendation:

1. Changes already made in the creation of the 2016 Qualified Allocation Plan with respect to the timing and scoring of applications will help reduce the number of total applications that must undergo by REA analysis, only to find that changes in scoring priority require REA to drop them and analyze other applications. Fewer applications will be de-prioritized by the program area as scores should not change as dramatically as in prior years. No specific action required as this has already occurred and is in place for the 2016 application round.
2. Management will continue to aggressively manage the pipeline of all applications, including bond transactions, re-evaluations, and amendments such that the current year 9% applications are prioritized quickly and with the best possible information. This is already occurring in weekly meetings with Executive, Multifamily, Asset Management, Legal, and External Affairs. We will continue to find ways to improve processes that will save time without compromising the analysis. This is an ongoing action.
3. Full implementation of the Real Estate Analysis Application Summary will allow TDHCA Governing Board and stakeholders to have timely underwriting information without the full underwriting report being finalized and posted. It should be noted that in the past even where an original underwriting report has not been published on applications where underwriting has commenced, REA has generally performed sufficient analysis to conclude that the proposed development is feasible.

Target Completion Date

July 30, 2016

Responsible Individuals and Title

Brent Stewart, Director of Real Estate Analysis
Tom Cavanagh, Manager of Real Estate Analysis

During the evaluation of the underwriting process, OIA noted REA deviated from the *Underwriting and Loan Policy Rules* related to:

- Presenting applications to EARAC when a significant confluence of concerns was identified
- Review and evaluation of personal credit reports when evaluating the overall capacity of the development team

Auditors noted that one (10%) of the ten underwriting reports tested was not presented to the EARAC as required when the underwriter identifies a significant confluence of concerns. In this instance, the applicant was made aware that the application would not be recommended for award because of the concerns. The applicant informed REA that it would not appeal the recommendation. According to REA leadership, the applicant was effectively withdrawing their application by not appealing REA's decision. Therefore, there was no action needed by EARAC and the deal was not presented to EARAC.

Underwriters do not review and evaluate personal credit reports as part of their evaluation of the development team capacity. The underwriting rules state that underwriters will review and evaluate the personal credit reports for development sponsors, developer fee recipients and those individuals anticipated to provide guarantees. It is not currently REA's practice to review personal credit reports when the applications are underwritten in REA.

Finding - REA deviated from the *Underwriting and Loan Policy Rules* related to:

- Presenting applications to EARAC when a significant confluence of concerns was identified
- Review and evaluation of personal credit reports when evaluating the overall capacity of the development team

Auditor recommendation - REA should comply with the *Underwriting and Loan Policy* rules in the Texas Administrative Code. If the rules or portions thereof are no longer relevant or applicable, the rules should be revised accordingly.

Management Response

Management agrees that REA should adhere to its rules and, if the rules need revision, pursue revision. The Planned Action consists of developing and proposing revisions to the rules to reflect current practice and procedure relating to these items. With respect to presenting applications to EARAC when a significant confluence of concerns is identified, a revision will be proposed to make that presentation optional by the Director of Real Estate Analysis based on the specific circumstances of the application. With respect to review and evaluation of personal credit reports, a revision will be proposed to make that language permissive in the rare cases that a personal credit report might be warranted.

Target Completion Date

During the annual rulemaking process in which the 2017 rules will be developed.

Responsible Individuals and Title

Brent Stewart, Director of Real Estate Analysis
Tom Cavanagh, Manager of Real Estate Analysis

Market Analyses

OIA noted the inherent risk that exists related to the current process for obtaining a market analysis, also referred to as market study, on a proposed multifamily development. Currently, the applicant engages and compensates the market analyst to provide the market study to TDHCA.

The Internal Revenue Code [26 U.S.C. § 42: US Code – Section 42 (m)] indicates that a comprehensive market study of the housing needs in the area to be served by the project is to be conducted before the credit allocation is made at the developer's expense by a disinterested party approved by the housing credit agency. The REA public webpage includes a list of approved market analysts, a document that provides the necessary qualifications for being included on TDHCA's approved market analyst list, a form (with instructions) for documenting the rental rate adjustments to include with the submitted market analysis and contact information for anyone that needs further information regarding market analysis.

The Texas Administrative Code, Title 10, Part 1, Chapter 10, Subchapter D, § 10.303 contains the Market Analysis Rules and Guidelines. In general, the market analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The market analysis must determine the feasibility of the subject property rental rates or sales price and state conclusions as to the impact of the property with respect to the determined housing needs. The market analysis must be prepared and certified by a qualified market analyst approved by the Department. 10 TAC Chapter 10.303 (d) itemizes the required market analysis contents. If it is found that a market analyst has not conformed to the Department's rules and guidelines, the analyst will be notified of the discrepancies in the analysis and be removed from the list of approved qualified analysts.

Currently, the applicant submits a market analysis to the Department. One of the real estate analysts prepares an independent market study which is compared to the market study submitted to the Department by the applicant. Discrepancies noted between the two studies by the real estate analyst will be documented in the underwriting report. Discrepancies between the studies could occur because the market analyst used a different data source or applied different assumptions when performing the analysis than the real estate analyst.

Because the market analyst is engaged and compensated by the applicant, it could be argued that they are not a "disinterested party". There is an inherent risk that the analyst may not be entirely objective. The market analyst may feel pressure to publish a market study that is favorable to the applicant although there may be evidence to the contrary. This type of pressure, even when unintended, subconscious or imagined, could have an impact on recommendations presented in the final market analysis. As a result the usefulness of the report could be diminished.

OIA reviewed the results of a survey conducted by the National Housing and Rehabilitation Association. According to the survey results, published in the June 2014 issue of *Tax Credit Advisor*, other states may follow a different approach regarding market studies. In some states, the state housing credit agency commissions the market study from a contractor. Another state has contracted underwriters order third party market studies.

Evaluating the cost and benefit of the current approach in comparison of other methods is outside the scope of this engagement. However, OIA recognizes the inherent risk that exists in the Department's practice.

New Application Summary

The REA Division developed an "Application Summary" to present select information of the proposed multifamily activity application in an easy to digest format. The new form is a two page summary document that presents the key components of the deal including: property description, key principals/sponsors, unit distribution, income distribution, proforma feasibility indicators, market feasibility indicators, development cost summary, photos or illustrations, site plan, debt, cash flow, equity, risk profile, conditions and recommendation. The summary uses colors and icons to convey when the indicators are within the acceptable range and when there is a potential risk. The new form was demonstrated at the March 21, 2016 EARAC meeting. The new form was well received by the attendees. REA plans to further enhance the summary form and share it with other stakeholders.

OIA extends our sincere appreciation to management and staff of the Real Estate Analysis Division for their cooperation and assistance during the course of this audit.

Sincerely,



Mark Scott, CPA, CIA, CISA, CFE, MBA
Director of Internal Audit

MES/mbs

cc:

Tim Irvine, Executive Director

Tom Gouris, Deputy Executive Director Asset Analysis and Management

Brent Stewart, Director of Real Estate Analysis

Tom Cavanagh, Manager of Real Estate Analysis

3c



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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April 28, 2016

Writer's direct phone # 512.475.3813
Email: mark.scott@tdhca.state.tx.us

TO: Chairman J. Paul Oxer and Board Members of the Texas Department of Housing and Community Affairs (TDHCA)

RE: Internal Audit Report (16-007) on the Implementation Status of Prior Audit Recommendations

Dear Chairman Oxer and Board Members,

The TDHCA Fiscal Year 2016 Internal Audit Plan provides for a review of the implementation status of prior audit recommendations. The purpose of this report is to provide information regarding the status of management's efforts to address issues and recommendations noted during both internal and external audit work.

SCOPE AND METHODOLOGY

Our follow-up work covers TDHCA Office of Internal Audit (OIA) open findings and related recommendations made in audit reports dated through March 31, 2016. An open finding is defined as a finding that was not completely addressed, or for which further action was still required, at the time of the last review, which was October 9, 2014.

BACKGROUND

The TDHCA undergoes internal and external audits on a regular basis. Internal audits and external audits and reviews may include findings and associated recommendations that require follow-up to ensure that the issues identified during the audits have been addressed. External audits by the State Auditor's Office and federal oversight agencies may also include either formal findings or informally communicated issues that require follow-up. The Institute of Internal Auditors Standards state that "the chief audit executive must establish and maintain a system to monitor the disposition of results communicated to management. The chief audit executive must establish a follow-up process to monitor and ensure that management actions have been effectively implemented or that senior

management has accepted the risk of not taking action. The internal audit activity must monitor the disposition of results of consulting engagements to the extent agreed upon with the client.”

The following report provides an inventory of internal and external audits, and the related open findings. In some cases, we have tested management’s reported status, or spot-checked their assertions. This will close the finding that was reviewed so that it will not appear on future follow-up reports.

Audit reports with open findings that were outstanding as of the follow-up report dated October 9, 2014 include:

- “Loan Processing Audit” (13-1056),
- “Amy Young Barrier Removal Program Audit” (14-1058),
- “Low Income Home Energy Assistance Program Audit” (14-1060), and
- “Manufactured Housing Division’s Titling Process Audit” (14-1061).
- “U.S. Department of Housing and Urban Development’s (HUD) Affordable Housing Monitoring and Technical Assistance Visit” report dated August 17, 2012.

Internal Audit reports addressed during this follow-up project include:

- “Financial Administration Division Audit” (14-1063),
- “Performance Measures Audit” (14-1064),
- “Payroll Audit” (15-004),
- “Records Retention Process Review” (15-005), and
- “Program Income Audit” (15-007).

External audits include:

- “Onsite Voucher Management System (VMS) Validation Review” by HUD,
- “In-Depth Environmental Monitoring of Compliance with 24 CFR Part 58, Environmental Review Procedures for entities Assuming HUD Environmental Responsibilities” by HUD,
- “Federal HOME Program” by KPMG, LLP, as included in the State Auditor’s Office Report #16-317 “State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2015,”
- “TDHCAs Fiscal Year 2015 Financial Statements Audit” by Texas State Auditor’s Office (SAO) Report #16-011,
- “Fiscal Year 2015 Financial Statements” SAO Report #16-307,
- “Revenue Bond Program Enterprise Fund” SAO Report #16-308,
- “Computation of Unencumbered Fund Balances” SAO Report #16-309
- “Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements” SAO Report #16-310,
- “Compliance with the Public Funds Investment Act” SAO Report #16-311,
- Texas Department of Public Safety Onsite Recent Non-Criminal Justice Audit, and
- U.S. Department of Health and Human Services, Administration for Children and Families Division review of Community Service Block Grants (CSBG).
- Gartner Inc. review of Information Technology Security.

At the time of our review, the reports listed above contained a total of 43 (27 current and 15 follow-up from prior report dated October 9, 2014) audit recommendations. OIA did not test all of the actions taken on the recommendations. Some were spot-checked and management provided documentation for some.

Please see

- Section I – Summary status of all OIA open Audit Recommendations;
- Section II – External Review by other State and Federal Agencies, and outside Firm;
- Section III – Update on prior audit recommendations report dated October 9, 2014; and
- Section IV – External Reviews in Progress.

We express our appreciation to TDHCA management and staff for their courtesy and cooperation during this work. Please contact me at 512-475-3813, if you have any questions or concerns about the information contained in this report.

Sincerely,



Mark E. Scott, CPA, CIA, CISA, CFE, MBA
Director of Internal Audit

Cc: Tim Irvine, Executive Director
Beau Eccles, General Counsel
Brooke Boston, Deputy Executive Director, Fair Housing, Data Management and Reporting
Tom Gouris, Deputy Executive Director, Asset Analysis and Management
David Cervantes, Chief Financial Officer
Patricia Murphy, Chief of Compliance
Michael Lyttle, Chief of External Affairs
Joe Garcia, Executive Director, Manufactured Housing Division

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**SECTION I. STATUS OF INTERNAL AUDIT RECOMMENDATIONS
AS OF MARCH 31, 2016**

Name and Number of Report	Observation/Findings and Recommendations	Management Reported Status as of March 31, 2016
<p>Audit #14-1063 Financial Administration Division Audit Issued 9/23/2014</p>	<p>Finding 14-1063_Housing_Finance_Revenue_Section.1: Even though the Division has controls to maintain and monitor the timeliness of deposits, two deposits were found to have been deposited late. Recommendation 14-1063_Housing_Finance_Revenue_Section.1: The Financial Administration division should continue their efforts to minimize the occurrence of late deposits and meet the three day deposit timeline required by the Comptroller.</p>	<p><i>Any instances in which the three day timeline cannot be met are being properly documented.</i> Assertion has been verified and finding is closed.</p>
<p>Audit #14-1063 Financial Administration Division Audit Issued 9/23/2014</p>	<p>Finding 14-1063_Housing_Finance_Revenue_Section.2: The Division has not fully documented the housing finance revenue payment processing procedures. Individual staff members have developed steps for performing their assigned responsibilities. However, the complete procedures for payment posting and deposit preparation are not formally documented by management. Recommendation 14-1063_Housing_Finance_Revenue_Section.2: The Financial Administration Division should fully document the procedures for processing housing finance revenue payments. The documented procedures should be reviewed and approved by Division management.</p>	<p><i>An SOP related to the processing of checks for strengthening internal controls has been developed and implemented.</i> Assertion has been verified and finding is closed.</p>
<p>Audit #14-1064 Performance Measures Audit Issued 7/8/2014</p>	<p>Finding 14-1064_Chapter_1.1: The Percent of Households / Individuals Assisted performance measure is not based on the funds used to assist those households. Recommendation 14-1064_Chapter_1.1: The Department should calculate the "Percent of Households/Individuals Assisted" using a methodology that includes current income data.</p>	<p>Assertion has been verified and finding is closed.</p>
<p>Audit #14-1064 Performance Measures Audit</p>	<p>Finding 14-1064_Chapter_2.1: Calculation of the Single Family HOME performance measure is not based on consistent criteria. Recommendation 14-1064_Chapter_2.1: The Department should follow the performance measure's</p>	<p><i>The referenced query now appropriately uses the Program Services approval date instead of the Accounting approval date to properly consider a loan funded.</i> Assertion has been verified</p>

Issued 7/8/2014	definition when counting the "Number of Households Assisted with Single Family HOME Funds."	and finding is closed.
Audit #14-1064 Performance Measures Audit Issued 7/8/2014	Finding 14-1064_Chapter_4.1: The Department's procedures for performance measure reporting are not finalized. Recommendation 14-1064_Chapter_4.1: The Department should finalize its draft policies and procedures for performance measure reporting.	<i>The SOP was finalized on July 1, 2014.</i> Assertion has been verified and finding is closed.
Audit #15-004 Review of Payroll Process Issued 3/27/15	Finding 15-004_D.1: The Excel worksheet that is maintained for payroll percentages for funding source is not password protected. Recommendation 15-004_D.1: Have the Excel sheet password protected.	<i>The spreadsheet has been protected.</i> Assertion has been visually verified and finding is closed.
Audit #15-004 Review of Payroll Process Issued 3/27/15	Finding 15-004_D.2: The Excel worksheet is currently kept on Staff's P drive, which is inaccessible to other staff that might require the information contained on the spreadsheet. Recommendation 15-004_D.2: Place "Excel sheet on the Departments shared drive to allow authorized staff access to the information.	<i>The spreadsheet is placed monthly on the T:\ drive and is inaccessible to unauthorized users.</i> Assertion has been visually verified and finding is closed.
Audit #15-005 Records Retention Process Review Issued 4/1/2015	No findings to follow-up	N/A
Audit #15-007 Review of Program Income Issued 1/14/2016	Finding 15-007.1 Responsibilities for monitoring and reconciling NSP program income recorded in DRGR have not been clearly designated or communicated. Recommendation 15-007.1 Responsibilities for monitoring and reconciling program income information recorded in DRGR should be clearly designated and communicated. NSP program management should ensure that program income information recorded in DRGR is monitored and reconciled to the other relevant TDHCA information systems on a regular and routine basis.	<i>The Financial Administration Division has implemented Standard Operating Procedure 240.24 titled "Reconciliation of NSP Program Income" March 31, 2016.</i> <i>The Single Family Operations and Services Division has implemented Standard Operating Procedure 2380.07 titled "Neighborhood Stabilization Program – Program Income" April 4, 2016.</i> Assertions have been verified and finding closed.

SECTION II. STATUS OF EXTERNAL AUDIT ISSUES

EXTERNAL REVIEW BY OTHER STATE AGENCIES

Single Audit

Each year the Texas Office of the State Auditor issues a report titled *State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2015*. The federal compliance portion of the audit was performed by KPMG, LLC. Our report notes if OIA considers the finding fully addressed. External auditors may review status at a later time.

Results	Recommendations
<p><u>HOME Investment Partnerships Program Finding 2015-027</u></p> <p>For employees whose time is charged to multiple federal programs, timesheets have federal program codes that identify all the programs the employee works on and the amount of time spent working on the respective program. All employees fill out timesheets according to the hours that they worked. Employee time is charged based on a budgeted percentage. On a monthly basis payroll staff reconcile actual time worked by program to the actual amount charged and make an adjusting entry in the subsequent period for the difference to actual. However, the review of the payroll adjusting entry is currently not at the correct precision level to ensure the true-up calculation is complete and accurate. No compliance exceptions were noted.</p>	<p>After the payroll adjustment for budget to actual is made, but before the entry is entered into the general ledger, the adjustment should be reviewed by a payroll supervisor or a financial analyst for completeness and accuracy.</p>
<p>TDHCA has implemented additional control procedures that further ensure that the true-up calculation is complete and accurate at September 1, 2015. Assertion has been verified and finding is closed. (The SAO may review this at a later date, but for purpose of OIA tracking the finding is closed.)</p>	
<p><u>HOME Investment Partnerships Program Finding 2015-028</u></p> <p>Prior to submission of the final 60002 Report to HUD, the manager of program services performs a high-level review of the information to ensure reasonableness which is not at a precise enough level to validate the completeness and accuracy of the information be reported. There is no verification done by the reviewer, even on a sample basis, of the information within the supporting subrecipient source documentation. TDHCA does incorporate into their subrecipient monitoring process a review of the reported data back to source documents. No compliance issues were noted.</p>	<p>TDHCA should enhance their HUD 60002 report review process to include validation of some source documentation to the tracking spreadsheet in order to verify the completeness and accuracy of the information being reported.</p>
<p>The Single Family Operations and Services Division updated Section 3 reporting review procedures and implemented a more detailed supervisory review as of February 29, 2016. Final, updated SOP includes a more detailed supervisory review: <u>T:\so\sops\SOPs\HUD Section 3\Final Sec3 SOP 4 2106.pdf</u>. Assertions have been verified and finding is closed for OIA purposes.</p>	

“TDHCAs Fiscal Year 2015 Financial Statements Audit” by Texas State Auditor’s Office (SAO) Report #16-011	No Findings to follow-up
“Fiscal Year 2015 Financial Statements” SAO Report #16-307	No Findings to follow-up
“Revenue Bond Program Enterprise Fund” SAO Report #16-308	No Findings to follow-up
“Computation of Unencumbered Fund Balances” SAO Report #16-309	No Findings to follow-up
“Report on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements” SAO Report #16-310	No Findings to follow-up
“Compliance with the Public Funds Investment Act” SAO Report #16-311	No Findings to follow-up
Texas Department of Public Safety Onsite Review of Background Check Process Performed on Section 8 Participants.	No Findings of Non-Compliance to follow-up.

EXTERNAL REVIEW BY A FEDERAL AGENCY

U.S. Department of Housing and Urban Development

A. Review for Monitoring Report for On-site, In-Depth Environmental Monitoring of Compliance with 24 CFR Part 58, *Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities*, August 25-29, 2014.

Results	Recommendations
<p>Finding #1</p> <p>The State has not established an in-depth environmental monitoring program which is one of the principal responsibilities of States administering HUD programs.</p>	<p>The State must explain to HUD how it will establish an in-depth monitoring program for post award actions. The State can refer to Chapters 2, Management of Monitoring Activities, and Chapter 21, Environmental Monitoring, of the CPD Monitoring Handbook 6509.2 for guidance in structuring an in-depth monitoring program. These documents can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/6509.2 and CPD Notice 14.03. It can also use as guidance the CPD Notice Implementing Environmental Risk Analysis for Monitoring HUD Part 58 Programs related to developing a risk based approach to selection of entities for monitoring. This document can be found at http://portal.hud.gov/hudportal/documents/huddoc?id=14-03cpdn.pdf.</p>
<p>Finding #2</p> <p>The State exceeded its authority in requiring approval of environmental review records prior to environmental clearance and in requiring review and approval of site-specific reviews prepared subsequent to environmental clearance of related tiered environmental reviews.</p>	<ol style="list-style-type: none"> 1. TDHCA should establish separate procedures to distinguish its responsibilities as the State from its responsibilities as RE. The procedures related to its role as the State should describe internal roles and responsibilities, recordkeeping, risk analysis, monitoring and training. The procedures related to its responsibilities as RE should describe internal roles and responsibilities; preparation, review and approval of environmental reviews; submission of RROFs to HUD; and recordkeeping including maintenance of environmental review records. 2. The State should delete inconsistencies between the requirements of 58.72 and any guidance it provides to REs, particularly requirements for State approval of environmental review records prior to clearance. 3. The State needs to establish a log for RROFs it processes as administrator of HUD programs.
<p>Finding #3</p> <p>TDHCA, in its role as Responsible Entity (RE), inappropriately applied the provisions for tiering, and in some cases, either did not properly describe activities or appropriately aggregate activities into project descriptions used as the basis for tiered environmental reviews.</p>	<ol style="list-style-type: none"> 1. TDHCA as RE, must provide a written description to HUD on how it intends to improve project aggregation and tiering practices for future environmental reviews. 2. The State should include sessions on project aggregation, developing meaning full project descriptions, and appropriate tiering procedures in its training programs.

<p>Finding #4</p> <p>TDHCA, in its role as RE, did not always comply with Section 58.6, Other Requirements.</p>	<p>The RE should provide a written explanation to HUD as to how it intends to ensure future compliance with 58.6.</p>
<p>Finding #5</p> <p>TDHCA, in its role as RE, did not always comply with the Endangered Species Act (ESA) as Section 58.5(e) requires.</p>	<p>The RE must describe to HUD how it will ensure compliance with Section 58.5(e). The description should outline the process by which it will evaluate each species potentially located in the project area to reach the appropriate determination of “no effect,” “may effect, not likely to adversely affect” or “may effect, likely to adversely effect.” It must also describe the professional qualification necessary for individuals preparing the evaluations.</p>
<p>Finding #6</p> <p>In its capacity as RE, TDHCA, did not always document compliance with Section 58.5(a), Historic Properties.</p>	<p>TDHCA in its role as RE must provide a written description to HUD as to how it will comply with Section 58.5(a) in its future environmental reviews.</p>
<p>Finding #7</p> <p>In its capacity as RE, TDHCA, did not sign and date environmental reviews.</p>	<p>TDHCA, as RE, must provide a written explanation to HUD as to how it will ensure that an RE’s Authorized official will sign and date environmental reviews for future projects.</p>
<p>HUD found the responses from TDHCA, dated January 30, 2015, sufficient to address the Corrective Actions associated with each of the seven Findings, and all Findings are now closed.</p>	

B. The purpose of the Onsite Section 8 VMS Validation Review performed by HUD was to validate the Unit Months Leased (UML) and related Housing Assistance Payment (HAP) expenses certified as accurate by the TDHCA for the period May 1, 2014 through April 30, 2015.

Results	Recommendations	TDHCA Responses in Report
<p>Concern No. 1:</p> <p>Non-Elderly Disabled 2008 & 2009 UMLs/HAPs (NED) was incorrectly reported.</p>	<p>We recommend that the PHA become familiar with the VMS User Manual definition of NED and work with the software system provider to reduce manual processes. Please revise VMS to reflect the QAD validated amounts.</p>	<p>Upon review of the monitoring report, the Department was able to identify areas within the program software that were not updated to reflect the “Special Program Types.” The Non-Elderly Disabled families (NED) were able to be identified and have been cross-referenced. In comparison to the Chart No 1, TDHCA agrees with the validated UMLs. TDHCA will revise its internal process to accurately report the UML’s and HAP.</p>
<p>Concern No. 2:</p> <p>UMLs/HAPs portable vouchers</p>	<p>We recommend that the Public Housing Authority (PHA) become</p>	<p>The Department met with the software developer and was able</p>

<p>paid (Port Outs) was incorrectly reported.</p>	<p>familiar with the VMS User Manual definitions of UML and HAP Port Outs. The PHA should work with the software provider on coding program categories and generating reports from the Happy Software system. Please revise VMS to reflect the QAD validated amounts.</p>	<p>to identify UML and HAP Port Outs. TDHCA agrees with the validated HAP in Chart No 2. TDHCA will revise our internal process to accurately report the UMLs and HAP.</p>
<p>Concern No. 3: The UMLs and HAP All Other Vouchers was incorrectly reported.</p>	<p>We recommend that the PHA revise their quality control procedures, familiarize themselves with VMS reporting requirements, improve communication between the Program office and Finance department, and revise their VMS data to reflect QAD validated numbers. Establish and maintain an efficient system for generating accurate utilization and HAP reports.</p>	<p>The Department met with the software developer. Both the Port Out and Port In HAP payments have been identified and excluded from AOV. The second check-un is a set of payments that were not generated due to incomplete vendor documentation. We will follow HUD's recommendation to focus reporting on the current month and make accrual adjustments for one prior month at a later date. All supporting documents will be maintained with the reported figures for the month and the monthly accrual adjustment.</p>
<p>Concern No. 4: HAPs All Voucher Expense After First of the Month was incorrectly reported.</p>	<p>We recommend the PHA establish procedures to check VMS data prior to and after submitting data. The PHA should make the necessary corrections in VMS.</p>	<p>This data entry error has been corrected in VMS. The Department will perform a more detailed review to ensure data integrity throughout the process and validation of the data entry.</p>
<p>Concern No. 5: Vouchers Under Lease on Last Day of Month was reported incorrectly.</p>	<p>We recommend that the PHA revise data to the QAD validated.</p>	<p>Historically, the Department was not accurately identifying vouchers under lease the last day of the month. Manual payments submitted after the first of the month were not being double checked. The revised procedure will include a notification through email advising FAAO to update the unit count for that payment period in order to rectify the miscount. The Department has revised the data to the QAD as requested and is revising the procedure.</p>
<p>Concern No. 6: Vouchers Issued bur not Under</p>	<p>The PHA should develop and implement policy and procedures</p>	<p>The Department was tracking the total number of new vouchers</p>

<p>Hap on the last Day of the Month were incorrectly reported.</p>	<p>that will allow for proper reporting in this category. The PHA must make corrections to VMS as shown in the validated column of the table above.</p>	<p>issued and incoming Port Ins. The Department will implement the revised procedure, thereby accounting for only new vouchers. The Department will make the corrections to VMS as shown in the table.</p>
<p>Concern No. 7: The PHA incorrectly included Portable Vouchers paid (Port Outs) as HAP Portable Vouchers Administered (Port Ins).</p>	<p>We recommend that the PHA establish procedures for mapping Portable Units Administered on behalf of another PHA in their financial system to assist them in keeping the program types separate. Please refer to the VMS User's Manual definition of VMS reporting fields, and revise VMS in the QAD validated amounts.</p>	<p>The Department recognizes the need to have internal measures in place for Port In and Port Out. Prior to running ports, the process for Port In will be run as a separate check run to eliminate any confusion or duplication. In addition, Port Out will be verified and given a "Port Out" indicator to reduce the possibility of combining expenses.</p>
<p>Concern No. 8: Fraud Recovery was incorrectly reported.</p>	<p>QAD recommends that the PHA correct VMS to reflect QAD's validated amounts and establish procedures for ensuring data integrity prior to submitting Fraud Recovery data in VMS.</p>	<p>Per our email correspondence in Attachment A. HUD agrees that Oct and Nov 2015 reported amounts are correct. No correction is needed in VMS.</p>
<p>Concern No. 9: Interest or Other Income Earned this Month from the Investment of Hap Funds is under reported.</p>	<p>QAD recommends the PHA correct VMS to reflect QAD's validated amounts and establish procedures for ensuring data integrity prior to submitting Interest data in VMS.</p>	<p>Per our email correspondence in Attachment A. HUD agrees that May and June 2014 reported amounts are correct. No correction is needed in VMS. However, Feb 2015 amount should be \$38. It was a data entry error in VMS. The Department will make the revision to the February 2015 amount. The Department will conduct a more detailed review to ensure data integrity.</p>
<p>Concern No. 10: Financial Management Record Keeping Controls require improvement.</p>	<p>The PHA Executive Director must take appropriate steps to ensure accounting records are complete, accurately maintained, and make available for future reviews and/or audits.</p>	<p>The PHA uses PeopleSoft to execute outgoing monthly payments and process all financial transactions. To ensure accounting records are complete, accurately maintained, and made available for future reviews and/or audits, the Department will make sure the backup documentation for VMS is organized and readily accessible. Report headings and column headings have been added</p>

		<p>for clarity in future desk reviews. The PHA uses Housing_pro as a sub-system for internal processing of tenant files. Documents being compiled for submittal will be saved in "pdf" format and stored in one central location.</p>
<p>HUD found the responses from TDHCA, email dated September 2, 2015, sufficient to address the Corrective Actions associated with each of the ten Findings, and all Findings are now closed.</p>		

OTHER EXTERNAL REVIEW BY OTHER

Gartner Inc. was hired to review security and other Information Technology (I.T.) issues at TDHCA. The review was systematic and provided some good recommendations. I.T. reviews are routinely conducted at Texas State Agencies based on guidance from the Department of Information Resources.

National Foreclosure Mitigation Counseling Program (NFMC) Quality Control and Compliance Review for Rounds 6 and 7 conducted by Mayer Hoffman McCann P.C. (MHM) on behalf of NeighborWorks® America. MHM noted during the review that the Department did not fully comply and cooperate with the quality control and compliance efforts of the NFMC Program. Through the evaluation process all documentation to support Round 7 Match was not received. Neighbor Works® America letter dated April 6, 2015 stated **findings have been closed** based on the documented evidence provided by the Department.

Section III. Update on Prior Audit Issues Report Dated October 9, 2014

AUDIT AND RECOMMENDATION	STATUS AT OCTOBER 9, 2014	STATUS AT APRIL , 2016
<p>HUD Affordable Housing Monitoring and Technical Assistance Visit, Report dated 08/17/2012:</p> <p>Because two projects noted in FY 2009 report remain unresolved, this finding remains open. Once the remaining issues for <i>Duncan Place and Flamingo Bay (Lakeside Center)</i> are resolved through repayment of the HOME Investment to the state's HOME Treasury Account; approval of a grant reduction; or otherwise brought into compliance, this finding can be cleared. The state needs to continue to work to bring the <i>Juan Linn and Red River</i> projects into compliance.</p> <p>These final corrections need to be completed on or before February 28, 2013. If compliance cannot be achieved via one of the above-referenced options, the state must repay its HOME Treasury Account for the full amount of the HOME Investment for these projects from non-federal funds. The state should also provide a monthly update on the status of the above noncompliant projects with the first report being due on or before September 5th, and by the 5th day of each month thereafter.</p>	<p>Management has not yet reported this recommendation as implemented.</p> <p>Management has reported a revised implementation date as 07/31/2013.</p>	<p>HUD found the responses from TDHCA sufficient to address the Corrective Actions associated with each Finding, and all Findings are now closed.</p>
<p>Internal Audit of Loan Processing Report; 13-1056, dated November 2013:</p> <p>The Department should:</p> <ul style="list-style-type: none"> • obtain and review all of the required trailing documents from the title companies after closing, • run the outstanding trailing document report monthly and follow up on any missing documents as required by the loan closing policy, and • ensure consistency in the requirements for the return of trailing documents to the 	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertions have been verified and finding closed.</p>

Department.		
<p>Internal Audit of Loan Processing Report; 13-1056, dated November 2013:</p> <p>In instances where the title commitment has expired, the Department should ensure that an updated title commitment is received prior to closing.</p>	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertion has been verified and finding closed.</p>
<p>Internal Audit of Loan Processing Report; 13-1056, dated November 2013:</p> <p>The Department should maintain evidence that disclosures required by the Real Estate Settlement Procedures Act and the Truth in Lending Act were provided to the borrower.</p>	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertion has been verified and finding closed.</p>
<p>Internal Audit of Loan Processing Report; 13-1056, dated November 2013:</p> <p>The Department should ensure that the Legal Division:</p> <ul style="list-style-type: none"> • periodically reviews the templates used by the HOME HBA loan closer to determine if they should be revised, and • reviews the loan documents on a sample basis to ensure they are being completed accurately and used as intended. 	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertions have been verified and finding closed.</p>
<p>Internal Audit of Loan Processing; Report #13-1056, dated November 2013:</p> <p>The divisions involved in loan processing should ensure that loans are entered into the Loan Window as required so that loan processing times can be tracked.</p>	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertion has been verified and finding closed.</p>
<p>Internal Audit of the Amy Young Barrier Removal Program; Report #14-1058, dated 04/24/2014:</p> <p>The Amy Young Barrier Removal Program should ensure that individuals who perform the initial review of the activity set-ups are not also performing the secondary review of those same activity set-ups.</p>	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertion has been verified and finding closed.</p>
<p>Internal Audit of the Manufactured Housing Division's Titling Process; Report #14-1061, dated April 2014:</p>	<p>Management has not yet reported this recommendation as implemented.</p>	<p><u>SOP 2505.01</u> for Processing an SOL Application stipulates that once an application has been processed it will be</p>

<p>Chapter 1-A Finding and Recommendation:</p> <p>Of the SOL applications tested requiring a review by the Document Control group, one, or 3%, was not reviewed. It is the Divisions' policy that regularly processed SOL applications are reviewed by the Document Control Group before they are issued.</p> <p>The Division should ensure that all SOL applications that require a Document Control review are reviewed as required.</p>		<p>routed to the Document Control Unit for proofing.</p> <p>Assertion has been verified and finding closed.</p>
<p>Internal Audit of the Manufactured Housing Division's Titling Process; Report #14-1061, dated April 2014:</p> <p>Chapter 1-B Finding and Recommendation:</p> <p>Not all corrected SOLs received a corrected application.</p> <p>The Division should either require a completed and corrected SOL application prior to issuing a corrected SOL or consider revising the Texas Administrative Code to clarify when a corrected application is required.</p>	<p>Management has not yet reported this recommendation as implemented.</p>	<p>10 TAC 80.90(c) was updated in 2014 to include language clarifying that the correction requires a completed SOL application or documentation deemed appropriate by the Executive Director.</p> <p>(c) Corrections to Statements of Ownership and Location.</p> <p>(1) If a correction is required as a result of a Department error, it will be corrected at no charge.</p> <p>(2) If a correction is requested because of an error made by a party other than the Department, the correction will not be made until the Department receives the following:</p> <p>(A) A complete corrected application for Statement of Ownership and Location, or</p> <p>(B) Documentation deemed appropriate and approved by the Executive Director.</p> <p>Finding has been closed for OIA purposes.</p>
<p>Internal Audit of the Manufactured Housing Division's Titling Process; Report #14-1061, dated April 2014:</p>	<p>Management has not yet reported this recommendation as implemented.</p>	<p>Implemented this information in the supervisor's spreadsheet.</p>

<p>Chapter 1-C Finding and Recommendation:</p> <p>From November 2013 through February 12, 2014 a total of forty-seven corrected SOLs were issued as a result of staff error. This spreadsheet is used as part of the evaluation process for the processors as well as identifying areas for additional training.</p> <p>The Division should consider adding the following information to the spreadsheet:</p> <ul style="list-style-type: none"> • Total number of unique corrected SOLs that were issued due to departmental error, • Total number of unique corrected SOLs where the error was found by the customer, • Total number of unique corrected SOLs where the error was found by the department, and • The types of errors made, such as data entry on name, address, or election type. <p>In addition, the Division may want to consider working with the Information Systems (IS) division to incorporate some of these enhancements into the Exodus system as part of an automated report.</p>		<p>Finding has been closed for OIA purposes.</p>
<p>Internal Audit of the Manufactured Housing Division's Titling Process; Report #14-1061, dated April 2014:</p> <p>Chapter 2 Finding and Recommendation:</p> <p>The Division does not have current and complete policies and procedures for the SOL application process.</p> <p>The Division should update their policies and procedures over the SOL application process to reflect the current process.</p>	<p>Management has not yet reported this recommendation as implemented.</p>	<p>Created <u>SOP 2505.01</u> for Processing an SOL Application.</p> <p>Assertion has been verified and finding closed.</p>
<p>Internal Audit of the Low Income Home Energy Assistance Program (LIHEAP); Report #14-1060, dated April 22, 2014:</p> <p>The Community Affairs Division should review the LIHEAP expenditure reports on a regular basis in order to detect and</p>	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	<p>Assertion has been verified and finding closed.</p>

correct errors promptly.		
<p>Internal Audit of the Low Income Home Energy Assistance Program (LIHEAP); Report #14-1060, dated April 22, 2014:</p> <p>The Community Affairs Division should note the rationale for cost allocations on their purchase requests or vouchers in order to document reasonableness and allowableness of the cost.</p>	<p>Management reports that this recommendation has been implemented.</p> <p>Internal Audit has not yet verified this assertion.</p>	Assertion has been verified and finding closed.
<p>Internal Audit of the Low Income Home Energy Assistance Program (LIHEAP); Report #14-1060, dated April 22, 2014:</p> <p>The Community Affairs Division should provide guidance to subrecipients in defining "life-threatening" crises and in developing written policies to address them.</p>	<p>Management has not yet reported this recommendation as implemented.</p>	Assertion has been verified and finding closed.
<p>Internal Audit of the Low Income Home Energy Assistance Program (LIHEAP); Report #14-1060, dated April 22, 2014:</p> <p>The Community Affairs Division should finish updating its policies and procedures to reflect the roles and responsibilities of its staff in the current organization structure.</p>	<p>Management has not yet reported this recommendation as implemented.</p>	Assertion has been verified and finding closed.

SECTION IV. EXTERNAL REVIEWS IN PROGRESS

U.S. Department of Housing and Urban Development

State of Texas HOME Program Monitoring Strategy Audit will be conducted by HUD April 11-15, 2016. Areas to be monitored are:

- HOME Program Match
- Rental Housing Monitoring and Oversight
- Subrecipient Monitoring and Oversight
- Community Housing Development Organizations
- Homeownership Activities
- Homeowner Rehabilitation
- Lead-Based Paint

An exit conference was held on April 15th, 2016 and HUD personnel stated there were no findings or recommendations for this review.

U.S. Department of Health and Human Services

U.S. Department of Health and Human Services, Administration for Children and Families Division review of CSBG provided verbal feedback on March 4, 2016. They were complimentary of the program's training and "Dashboard" and said they would provide a draft report in 60 days. Any recommendations from that review will be added to tracking list at that point.

4

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit/HOME Application for Palladium Van Alstyne Senior Living (#15063)

RECOMMENDED ACTION

WHEREAS, Palladium Van Alstyne Senior Living received a 9% Housing Tax Credit (“HTC”) award and HOME funds in 2015 for the new construction of 132 units targeting seniors in the City of Van Alstyne;

WHEREAS, the Applicant is now requesting approval for changes that trigger a material alteration to the Application under §2306.6712(d)(1) and (5) of the Texas Government Code and 10 TAC §10.405(a)(3)(A), (E) and (H), requiring Board approval and the Owner has complied with the amendment requirements therein;

WHEREAS, the requested changes do not change this Application’s priority of allocation at the time of award because the cost per square foot item has not been re-scored after award, but in this case the change would have resulted in a one point reduction and the Application would have remained competitive;

WHEREAS, the Application would have remained eligible for a HOME award in the amended financing structure; however, the amount of debt, debt service and repayment under a cash surplus basis each increase the risk of the Department’s direct loan;

WHEREAS, no other changes proposed would have had a negative impact on scoring or feasibility; and

WHEREAS, the Applicant’s representation indicates that the changes are a result of previously unknown city design requirements and a better planned development that offers more benefit to its future residents;

NOW, therefore, it is hereby



RESOLVED, that the requested material application amendment of the HTC/HOME application for Palladium Van Alstyne Senior Living is approved subject to revised underwriting from the Department’s Real Estate Analysis division limiting the senior debt service and subject to the Department’s pre-closing checklist reviews, as presented to this meeting and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

An Application for Palladium Van Alstyne Senior Living was submitted and approved for a 9% HTC allocation and a HOME award during the 2015 competitive cycle. The Application proposed the new construction of 132 multifamily units targeting seniors in the City of Van Alstyne. The Development Owner, Palladium Van Alstyne Senior Living, Ltd. (Thomas E. Huth, President of co-manager of General Partner), has requested approval for changes to the site plan, number of residential buildings, development costs and financing structure that have occurred since Application.

The Application indicated that the Development would consist of 19 residential buildings: one three-story elevator served wrap style building and 18 single-story four-plex buildings. The Applicant explained that since approval of the Application construction prices have continued to rise at a rate that made the site plan originally submitted and approved by the Department problematic and the city specified additional design requirements. The amendment request is to consolidate the units into fewer buildings and reduce the total number of buildings from 19 to eight, consisting of two three-story buildings and six one-story buildings. The unit count, unit mix, and amenities will not change as a result of this amendment. The net rentable area of the Development will increase from 103,080 square feet to 109,656 square feet (a 6.38% increase). The acreage of the development site will not change, but the buildings will not be as scattered throughout the development site.

In addition to changes in the site plan, the Applicant also provided revised financial exhibits reflecting increases in development costs and changes to the permanent financing structure. A summary of the changes follow:

Material Alterations as defined in 2306.6712(d) and 10 TAC §10.405(a)(3)	
Application	Amendment
<p><u>Significant modification to the site plan</u></p> <p>19 residential buildings 132 units 103,080 net rentable square footage</p> 	<p>8 residential buildings 132 units 109,656 net rentable square footage</p> 

Material Alterations as defined in 2306.6712(d) and 10 TAC §10.405(a)(3)											
Application						Amendment					
Significant increases in development costs or changes in financing that affect the Department's direct loan financing structure or result in reductions of credit											
Sources and Uses of Funds						Sources and Uses of Funds					
Description	Loan/Equity Amount	Interest Rate	Amort	Term	Syndication Rate	Description	Loan/Equity Amount	Interest Rate	Amort	Term	Syndication Rate
Regions Bank-Conventional	\$4,230,000	6.00%	30	18		Dougherty-FHA 221(d)(4)	\$6,250,000	4.25%	40	18	
TDHCA HOME	\$900,000	3.00%	30	18		TDHCA HOME	\$900,000	3.00%	30	18	
City of Van Alstyne	\$57,000	Grant				City of Van Alstyne	\$57,000	Grant			
Carleton Construction	\$50,000	Grant				NE Construction	\$50,000	Grant			
Regions Bank – Equity	\$11,012,578				\$0.95	Regions Bank – Equity	\$11,939,956				\$1.03
Deferred Developer Fee	\$385,300					Deferred Developer Fee	\$508,580				
TDC	\$16,634,878					TDC	\$19,648,536				

Additional Financing Changes Identified Since Application		
	Application UW	Amendment UW
Total Cost per Unit	\$58,055	\$65,498
Cost per Square Foot	\$74.34	\$78.84

The Owner suggests that they believe many of the Development's future residents prefer to live in the main three-story building with interior corridors that connect to the amenities in the clubhouse. Additionally, the originally proposed site plan placed some units at the opposite end of the property, which would require a long walk to get mail or access the amenities. This amendment shifts units to the three-story buildings, which allows easier access to the amenities.

The revised site plan indicates that no buildings will be constructed on the northeast portion of the development site that was initially proposed to have seven residential buildings. The Applicant indicated that the vacant land in the northeast portion of the development site could be used for a phase II in the future. However, this land will be encumbered by the LURA for this Development and the Applicant understands that another amendment would be necessary to release this land from the LURA.

Staff has reviewed the original application and scored against the changes for which approval are requested in this amendment and has determined that only the cost per square foot would have been affected if it were to be re-scored today. Typically cost increases as a result of market conditions are not re-scored after award. In this case staff re-evaluated the potential impact and found the current cost per square foot would have

had a one point reduction had it been used at the time of award. This Application was six points ahead of the first application on the waiting list for this sub-region.

The changes in development costs and financing as a result of this amendment have been re-evaluated by the Department's Real Estate Analysis Division and the development remains financially feasible. The Addendum to the Underwriting Report can be found on the REA website at <http://www.tdhca.state.tx.us/rea/index.htm>. The HOME loan structure remains unchanged, except that it is likely that a cash surplus loan structure as a result of an FHA first lien is anticipated to be requested. The amount of first lien debt and debt service proposed in the amendment have increased creating more risk to the Department's HOME loan. In order to mitigate this risk Real Estate Analysis division is recommending reducing the first lien debt service to the level approved at award and thereby also reducing the total first lien debt.

February 16, 2016

Ms. Marni Holloway
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Proposed Palladium Van Alstyne Senior Living (Application #15063) sit plan amendment request

Ms. Holloway,

We are requesting an amendment to the site plan as submitted in application #15063. According to Section 10.405 concerning Amendments and Extensions, an amendment request may be denied if the Board determines that the modification proposed in the amendment: (A) would materially alter the Development in a negative manner; or (B) would have adversely affected the selection of the Application in the Application Round. Our amendment request does not affect the development in a negative manner nor would it have adversely affected the selection of the Application in the Application Round.

Since our application was submitted this past spring, construction prices have continued to rise at a rate that has made our site plan as submitted in application #15063 problematic. Our amendment simply alters the total building count in order to reduce the number of individual buildings. Our unit count and unit mix will stay the same and we do not plan to reduce or change any amenities or any point related item from application #15063 in this amendment.

There are real benefits to our residents as a result of this amendment. We have learned that many of our future senior residents prefer to live in the main 3-story building with interior corridors that connect to the amenities in the clubhouse. A second concern we have heard is that the site plan as submitted in the application placed some units at the opposite end of the property and would require a long walk to get mail or enjoy the amenities. This would be especially difficult in bad weather. This amendment shifts units to 3-story buildings and allows residents easier access to the many amenities of the community. The second benefit is that many of the unit sizes will increase as a result of this amendment netting residents larger units with easier access to amenities. There are no negative impacts from this amendment as many unit sizes increase and our updated site plan moves all residents closer to amenities and where life happens.

Below is a comparison of unit mixes from the application to our current unit mix with total square footages.

Palladium USA International, Inc./13455 Noel Rd., Ste. 400/Dallas, Texas 75240/972-774-4400

Application #15063

				BUILDING LABEL	I	II	III	TOTAL # OF RESIDENTIAL BLDGS	
				NUMBER OF STORIES	3	1	1	19	
				NUMBER OF BUILDINGS	1	9	9		
UNIT LABEL	UNIT TYPE	# OF BEDROOMS	# OF BATHS	SF PER UNIT				TOTAL # OF UNITS	TOTAL SF/UNIT TYPE
A	1	1	1	700	48			48	33600
A1	1	1	1	700		36		36	25200
B	2	2	2	990	12			12	11880
B1	2	2	2	900			36	36	32400
TOTAL					60	36	36	132	103,080

Amended Unit Count/Total Square Feet

				BUILDING LABEL	I	II	III	IV	TOTAL # OF RESIDENTIAL BLDGS	
				NUMBER OF STORIES	3	1	1	3	8	
				NUMBER OF BUILDINGS	1	3	3	1		
UNIT LABEL	UNIT TYPE	# OF BEDROOMS	# OF BATHS	SF PER UNIT					TOTAL # OF UNITS	TOTAL SF/UNIT TYPE
A	1	1	1	732	72				72	52704
A1	1	1	1	699		12			12	8388
B	2	2	2	1025	18			18	36	36900
B1	2	2	2	972			12		12	11664
TOTAL					90	12	12	18	132	109,656

We look forward to our opportunity to meet with you and your team this coming Friday to answer any questions you may have.

Sincerely,

Thomas E. Huth
President and CEO

PALLADIUM VAN ALSTYNE SENIOR LIVING
VAN ALSTYNE, TX - PALLADIUM

Proposed Amended Site Plan



UNIT LABEL	UNIT TYPE	# OF BEDROOMS	# OF BATHS	SF PER UNIT	I	II	III	IV	TOTAL # OF RESIDENTIAL BLDGS	TOTAL # OF UNITS	TOTAL SF/UNIT TYPE
A	1	1	1	732	72					72	52704
A1	1	1	1	699		12				12	8388
B	2	2	2	1025	18			18		36	36900
B1	2	2	2	972			12			12	11664
TOTAL					90	12	12	18		132	109,656

PARKING REQUIRED (CODE)
1.5 PER ONE BEDROOM
2.0 PER TWO BEDROOM

1.5 X (84) ONE BEDROOM = 126 SPACES
2.0 X (48) TWO BEDROOM = 96 SPACES
TOTAL = 222 SPACES

PARKING PROVIDED
OPEN = 176 SPACES (9 HC)
CARPORT = 40 SPACES (1 HC)
GARAGE = 6 SPACES (1 HC)
TOTAL = 222 SPACES (11 HC)

NOTE: HC = ACCESSIBLE PARKING
ACCESSIBLE PARKING IS INCLUDED IN TOTAL

BLASSINGAME ROAD

6 = BLDG #
III = BLDG TYPE
THIS SITE DOES NOT FALL WITH IN A FLOOD PLAIN
PARKING SPACES ARE 9X18 FEET TYPICAL

ARCHITECTS OF PLANNING & LANDSCAPE DESIGN • COMMERCIAL ADMINISTRATION •
KELLY GROSSMAN
ARCHITECTS, L.L.C.
200 ROCK HILL ROAD SUITE 210 NORTH, DALLAS, TEXAS 75244 972-227-2887

NORTH
SITE PLAN
SCALE: 1/4" = 1'-0"
IF THIS BAR SCALE DOES NOT MEASURE 1", THEN THE DRAWING IS NOT TO SCALE.

February 18, 2016

Rosalio Banuelos
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

RE: Proposed Palladium Van Alstyne Senior Living (Application #15063) sit plan amendment request
additional information

Dear Rosalio,

Attached are the requested items as additional information for our amendment to our site plan for
Application #15063 Palladium Van Alstyne Senior Living:

1. Revised Development Cost Schedule
2. The common area square footage as well as the development site acreage will remain unchanged from the application
3. The amended site plan (attached) identifies the location of the pet park, the detention area, as well as the 60' wide strip to be dedicated to the City of Van Alstyne
4. Attached are revised unit plans. We are finalizing the building plans and elevations and will have those to you as soon as we can

Please contact me with any questions.

Best regards,



Thomas E. Huth
President and CEO

Development Cost Schedule

**Palladium Van Alstyne Senior Living
2015 - 9% HTC**

Development Cost Schedule

	Total Cost	Per Unit	Per SF	Eligible Basis
ACQUISITION				
Site acquisition cost	536,400	4,064	4.89	0
Existing building acquisition cost	0	0	0.00	0
Closing costs & acq. legal fees	0	0	0.00	0
Other - Broker Fees	25,000	189	0.23	0
Subtotal Acquisition Cost	\$561,400	4,253	5.12	\$0
OFF-SITES				
Off-site concrete	0	0	0.00	0
Storm drains & devices	0	0	0.00	0
Water & fire hydrants	0	0	0.00	0
Off-site utilities	0	0	0.00	0
Sewer lateral(s)	0	0	0.00	0
Off-site paving	0	0	0.00	0
Off-site electrical	0	0	0.00	0
Other -	0	0	0.00	0
Subtotal Off-Sites Cost	\$0	0	0.00	\$0
SITE WORK				
Demolition	0	0	0.00	0
Rough grading	566,618	4,293	5.17	566,618
Fine grading	113,018	856	1.03	113,018
On-site concrete	708,655	5,369	6.46	708,655
On-site electrical	170,291	1,290	1.55	170,291
On-site paving	0	0	0.00	0
On-site utilities	637,636	4,831	5.81	637,636
Decorative masonry	0	0	0.00	0
Bumper stops, striping & signs	21,382	162	0.19	21,382
Other -	0	0	0.00	0
Subtotal Site Work Cost	\$2,217,600	16,800	20.22	\$2,217,600
SITE AMENITIES				
Landscaping	132,880	1,007	1.21	132,880
Pool and decking	203,335	1,540	1.85	203,335
Athletic court(s), playground(s)	45,043	341	0.41	45,043
Fencing	127,081	963	1.16	127,081
Other -	0	0	0.00	0
Subtotal Site Amenities Cost	\$508,339	3,851	4.64	\$508,339
BUILDING COSTS:				
Concrete	1,388,377	10,518	12.66	1,388,377
Masonry	343,385	2,601	3.13	343,385
Metals	190,463	1,443	1.74	190,463
Woods and Plastics	2,012,600	15,247	18.35	2,012,600
Thermal and Moisture Protection	119,035	902	1.09	119,035
Roof Covering	222,207	1,683	2.03	222,207
Doors and Windows	502,690	3,808	4.58	502,690

**Palladium Van Alstyne Senior Living
2015 - 9% HTC**

Development Cost Schedule

	Total Cost	Per Unit	Per SF	Eligible Basis	
BUILDING COSTS (Continued)					
Finishes	169,618	1,285	1.55	169,618	
Specialties	71,424	541	0.65	71,424	
Equipment	318,855	2,416	2.91	318,855	
Furnishings	281,505	2,133	2.57	281,505	
Special Construction	0	0	0.00	0	
Conveying Systems (Elevators)	239,164	1,812	2.18	239,164	
Mechanical (HVAC; Plumbing)	1,091,861	8,272	9.96	1,091,861	
Electrical	1,012,791	7,673	9.24	1,012,791	
Individually itemize costs below:					
Detached Community Facilities/Building	245,000	1,856	2.23	245,000	
Carports and/or Garages	30,000	227	0.27	0	
Lead-Based Paint Abatement	0	0	0.00	0	
Asbestos Abatement	0	0	0.00	0	
Structured Parking	0	0	0.00	0	
Commercial Space Costs	0	0	0.00	0	
Other - Builders Risk	70,630	535	0.64	70,630	
Subtotal Building Costs	\$8,309,603	62,952	75.78	\$8,279,603	
TOTAL BUILDING COSTS & SITE WORK (including site amenities)	\$11,035,541	83,603	100.64	\$11,005,541	
Contingency	5%	\$548,246	4,153	5.00	\$546,746
TOTAL HARD COSTS	\$11,583,787	87,756	105.64	\$11,552,287	
OTHER CONSTRUCTION COSTS					
General requirements (6%)	6.00%	657,895	4,984	6.00	656,095
Field supervision (within GR limit)		0	0	0.00	0
Contractor overhead (2%)	2.00%	219,298	1,661	2.00	218,698
G & A Field (within overhead limit)		0	0	0.00	0
Contractor profit (6%)	6.00%	657,895	4,984	6.00	656,095
TOTAL CONTRACTOR FEES	\$1,535,088	11,629	14.00	\$1,530,888	
TOTAL CONSTRUCTION CONTRACT	\$13,118,875	99,385	119.64	\$13,083,175	
SOFT COSTS					
Architectural - Design fees	315,400	2,389	2.88	315,400	
Architectural - Supervision fees	0	0	0.00	0	
Engineering fees	78,122	592	0.71	78,122	
Real estate attorney/other legal fees	100,000	758	0.91	50,000	
Accounting fees	60,000	455	0.55	60,000	
Impact Fees	655,918	4,969	5.98	655,918	
Building permits & related costs	95,238	722	0.87	95,238	
Appraisal	8,500	64	0.08	8,500	
Market analysis	16,500	125	0.15	16,500	
Environmental assessment	12,700	96	0.12	12,700	
Soils report	5,511	42	0.05	5,511	
Survey	12,059	91	0.11	12,059	
Marketing	0	0	0.00	0	
Partnership Hazard & liability insurance	19,000	144	0.17	19,000	
Real property taxes	104,657	793	0.95	104,657	
Personal property taxes	0	0	0.00	0	
Tenant relocation expenses	0	0	0.00	0	
Contingency	0	0	0.00	0	
Reimbursables	5,000	38	0.05	0	
FF&E	200,000	1,515	1.82	200,000	
Subtotal Soft Cost	\$1,688,605	12,792	15.40	\$1,633,605	

**Palladium Van Alstyne Senior Living
2015 - 9% HTC**

Development Cost Schedule

Total Cost	Per Unit	Per SF	Eligible Basis
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FINANCING:

CONSTRUCTION LOAN(S)

Interest	176,762	1,339	1.61	141,409
Loan origination fees	143,750	1,089	1.31	143,750
Title & recording fees	43,229	327	0.39	43,229
Closing costs & legal fees	40,000	303	0.36	40,000
Inspection fees	46,750	354	0.43	46,750
Credit Report	0	0	0.00	0
Discount Points	0	0	0.00	0
Letters of Credit	0	0	0.00	0
Materials Testing	39,000	295	0.36	39,000
Letter of Credit/MIP	0	0	0.00	0

PERMANENT LOAN(S)

Loan origination fees	0	0	0.00	0
Title & recording fees	0	0	0.00	0
Closing costs & legal	0	0	0.00	0
Bond premium	0	0	0.00	0
Credit report	0	0	0.00	0
Discount points	0	0	0.00	0
Credit enhancement fees	0	0	0.00	0
Prepaid MIP	0	0	0.00	0
Mortgage Broker	0	0	0.00	0
Application Fee	0	0	0.00	0

BRIDGE LOAN(S)

Interest	192,120	1,455	1.75	0
Loan origination fees	78,137	592	0.71	78,137
Title & recording fees	0	0	0.00	0
Closing costs & legal fees	0	0	0.00	0
Other -	0	0	0.00	0
Other -	0	0	0.00	0

OTHER FINANCING COSTS

	0			
Tax credit fees	63,997	485	0.58	0
Tax and/or bond counsel	0	0	0.00	0
Payment bonds	0	0	0.00	0
Performance bonds	101,707	771	0.93	101,707
Credit enhancement fees	0	0	0.00	0
Mortgage insurance premiums	56,250	426	0.51	0
Cost of bond underwriting & issuance	0	0	0.00	0
Syndication organizational cost	0	0	0.00	0
Tax opinion	0	0	0.00	0
Contractor Guarantee Fee	0	0	0.00	0
Developer Guarantee Fee	0	0	0.00	0
Other - Equity Investor Legal	25,000	189	0.23	12,500
Other - Equity Title	50,000	379	0.46	0
Subtotal Financing Cost	\$1,056,701	8,005	9.64	\$646,482

DEVELOPER FEES

Housing consultant fees	0	0	0.00	0
General & administrative	0	0	0.00	0
Profit or fee	2,304,489	17,458	21.02	2,304,489
Subtotal Developer Fees	\$2,304,489	17,458	21.02	\$2,304,489

13.29%

15.00%

**Palladium Van Alstyne Senior Living
2015 - 9% HTC**

Development Cost Schedule

	Total Cost	Per Unit	Per SF	Eligible Basis
RESERVES				
Rent-up	250,000	1,894	2.28	0
Operating	608,466	4,610	5.55	0
Replacement	0	0	0.00	0
Escrows	60,000	455	0.55	0
Subtotal Reserves	\$918,466	6,958	8.38	\$0
TOTAL HOUSING DEVELOPMENT COSTS	\$19,648,536	148,853	179.18	\$17,667,752

Total Eligible Basis	\$17,667,752
High Cost Area Adjustment (100% or 130%)	130%
Total Adjusted Basis	\$22,968,077
Applicable Fraction	75.75757576%
Total Qualified Basis	\$17,400,058
Applicable Percentage	7.510%
Credits Supported By Eligible Basis	\$1,306,744
(May be greater than actual request)	\$1,306,744

**Palladium Van Alstyne Senior Living
2015 - 9% HTC**

Rent Schedule												
Unit Type	HTC Units	HOME Units (Rent/Inc)	# of Units	# of Bed-rooms	# of Baths	Unit Size (NRSF)	Total NRSF	Program Rent Limit	Paid Utility Allowanc	Net Rent Per Unit	Total Monthly Rent	Total Annual Rent
1bd/1ba	30%		7	1	1	732	5,124	\$349	\$53	\$296	\$2,072	\$24,864
1bd/1ba LH/50%	50%	50% LH	6	1	1	732	4,392	\$582	\$53	\$529	\$3,174	\$38,088
1bd/1ba HH/50%	50%	50% HH	2	1	1	732	1,464	\$582	\$53	\$529	\$1,058	\$12,696
1bd/1ba	50%		5	1	1	732	3,660	\$582	\$53	\$529	\$2,645	\$31,740
1bd/1ba Cottage	60%		4	1	1	699	2,796	\$699	\$53	\$646	\$2,584	\$31,008
1bd/1ba	60%		43	1	1	732	31,476	\$699	\$53	\$646	\$27,778	\$333,336
1bd/1ba Cottage	Market		8	1	1	699	5,592	\$800	\$0	\$800	\$6,400	\$76,800
1bd/1ba	Market		9	1	1	732	6,588	\$800	\$0	\$800	\$7,200	\$86,400

2bd/2ba	30%		3	2	2	1025	3,075	\$419	\$66	\$353	\$1,059	\$12,708
2bd/2ba LH/50%	50%	50% LH	2	2	2	1025	2,050	\$698	\$66	\$632	\$1,264	\$15,168
2bd/2ba HH/50%	50%	50% HH	4	2	2	1025	4,100	\$698	\$66	\$632	\$2,528	\$30,336
2bd/2ba	50%		1	2	2	1025	1,025	\$698	\$66	\$632	\$632	\$7,584
2bd/2ba Cottage	60%		3	2	2	972	2,916	\$838	\$66	\$772	\$2,316	\$27,792
2bd/2ba	60%		20	2	2	1025	20,500	\$838	\$66	\$772	\$15,440	\$185,280
2bd/2ba Cottage	Market		9	2	2	972	8,748	\$1,000	\$0	\$1,000	\$9,000	\$108,000
2bd/2ba	Market		6	2	2	1025	6,150	\$1,000	\$0	\$1,000	\$6,000	\$72,000

3bd/2ba	50%		0	3	2	0	-	\$0	\$0	\$0	\$0	\$0
3bd/2ba	30%		0	3	2	0	-	\$0	\$0	\$0	\$0	\$0
3bd/2ba	30%		0	3	2	0	-	\$0	\$0	\$0	\$0	\$0
3bd/2ba	50%		0	3	2	0	-	\$0	\$0	\$0	\$0	\$0
3bd/2ba	60%		0	3	2	0	-	\$0	\$0	\$0	\$0	\$0
3bd/2ba	Market		0	3	2	0	-	\$0	\$0	\$0	\$0	\$0

Total Rental Income	132	831	109,656	\$691	\$91,150	\$1,093,800
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Non Rental Income	\$10.68	per unit/month for:	Garage Rentals	\$1,410	\$16,920
Non Rental Income	\$8.00	per unit/month for:	Application, Pet, Late and NSF Fees	\$1,056	\$12,672
Non Rental Income	\$5.53	per unit/month for:	Laundry, Vending, Cable	\$730	\$8,760
Total Non Rental Income	\$24.21			\$3,196	\$38,352

Total Gross Potential Revenue	\$94,346	\$1,132,152
Vacancy %	7.00%	\$6,604
Net Revenue	\$87,742	\$1,052,901

Schedule of Utility Allowances						
Category	Type	Bedrooms				
		Eff	1	2	3	4
Heating		0.00	\$14	\$18	\$0	0.00
Cooking		0.00	\$5	\$6	\$0	0.00
Other Electric		0.00	\$10	\$13	\$0	0.00
Air Conditioning		0.00	\$12	\$13	\$0	0.00
Water Heating		0.00	\$12	\$16	\$0	0.00
Electric Service Fee		0.00	\$0	\$0	\$0	0.00
Water		0.00	\$0	\$0	\$0	0.00
Sewer/Trash		0.00	\$0	\$0	\$0	0.00
Gas Service Fee		0.00	\$0	\$0	\$0	0.00
Adjuster to Current UA from DPC		0.00	\$0	\$0	\$0	0.00
Total		0.00	\$53	\$66	\$0	0.00
Source	Housing Authority of Grayson County					
Effective	1-Jan-15					

Palladium Van Alstyne Senior Living

Van Alstyne, TX
2015 - 9% HTC

15 YEAR OPERATING PROFORMA	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15
Income															
Gross Potential Revenue	1,093,800	1,115,676	1,137,990	1,160,749	1,183,964	1,207,644	1,231,796	1,256,432	1,281,561	1,307,192	1,333,336	1,360,003	1,387,203	1,414,947	1,443,246
Other Income	38,352	39,119	39,901	40,699	41,513	42,344	43,191	44,054	44,935	45,834	46,751	47,686	48,640	49,612	50,605
Interest Earnings on DSRF	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Gross Potential Revenue	1,132,152	1,154,795	1,177,891	1,201,449	1,225,478	1,249,987	1,274,987	1,300,487	1,326,497	1,353,026	1,380,087	1,407,689	1,435,842	1,464,559	1,493,851
Less: Vacancy	79,251	80,836	82,452	84,101	85,783	87,499	89,249	91,034	92,855	94,712	96,606	98,538	100,509	102,519	104,570
TOTAL REVENUE	1,052,901	1,073,959	1,095,439	1,117,347	1,139,694	1,162,488	1,185,738	1,209,453	1,233,642	1,258,315	1,283,481	1,309,151	1,335,334	1,362,040	1,389,281
Expenses															
General and Administrative Expenses	42,507	43,782	45,096	46,449	47,842	49,277	50,756	52,278	53,847	55,462	57,126	58,840	60,605	62,423	64,296
Management Fee	42,116	43,380	44,681	46,021	47,402	48,824	50,289	51,797	53,351	54,952	56,600	58,298	60,047	61,849	63,704
Payroll, Payroll Taxes, Employee Benefits	168,969	174,038	179,259	184,637	190,176	195,881	201,758	207,811	214,045	220,466	227,080	233,893	240,909	248,137	255,581
Repairs and Maintenance	60,986	62,816	64,700	66,641	68,640	70,699	72,820	75,005	77,255	79,573	81,960	84,419	86,951	89,560	92,247
Electric and Gas Utilities	28,800	29,664	30,554	31,471	32,415	33,387	34,389	35,420	36,483	37,577	38,705	39,866	41,062	42,294	43,563
Water, Sewer and Trash Utilities	51,000	52,530	54,106	55,729	57,401	59,123	60,897	62,724	64,605	66,543	68,540	70,596	72,714	74,895	77,142
Annual Property Insurance Premiums	36,300	37,389	38,511	39,666	40,856	42,082	43,344	44,644	45,984	47,363	48,784	50,248	51,755	53,308	54,907
Property Taxes	118,553	122,110	125,773	129,546	133,433	137,436	141,559	145,806	150,180	154,685	159,326	164,105	169,029	174,100	179,322
Reserves	51,216	52,752	54,335	55,965	57,644	59,373	61,155	62,989	64,879	66,825	68,830	70,895	73,022	75,212	77,469
Other Expenses	7,974	8,213	8,460	8,713	8,975	9,244	9,521	9,807	10,101	10,404	10,716	11,038	11,369	11,710	12,061
TOTAL EXPENSES	608,421	626,674	645,474	664,838	684,784	705,327	726,487	748,282	770,730	793,852	817,667	842,197	867,463	893,487	920,292
NET OPERATING INCOME	444,480	447,285	449,964	452,509	454,911	457,161	459,251	461,171	462,912	464,463	465,813	466,953	467,870	468,553	468,989
Debt Service															
Tax-Exempt Bonds	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Coverage	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Taxable debt	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874	346,874
Coverage	1.28	1.29	1.30	1.30	1.31	1.32	1.32	1.33	1.33	1.34	1.34	1.35	1.35	1.35	1.35
Other Debt - HOME Funds	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662	38,662
Other Debt Coverage - HOME Funds	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL DEBT SERVICE	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537	385,537
All In Debt Service Coverage Ratio	1.15	1.16	1.17	1.17	1.18	1.19	1.19	1.20	1.20	1.20	1.21	1.21	1.21	1.22	1.22
NET CASH FLOW	58,943	61,749	64,428	66,972	69,374	71,624	73,714	75,635	77,375	78,926	80,277	81,416	82,334	83,016	83,452

**Palladium Van Alstyne Senior Living
2015 - 9% HTC**

Financing Narrative and Summary of Sources and Uses of Funds

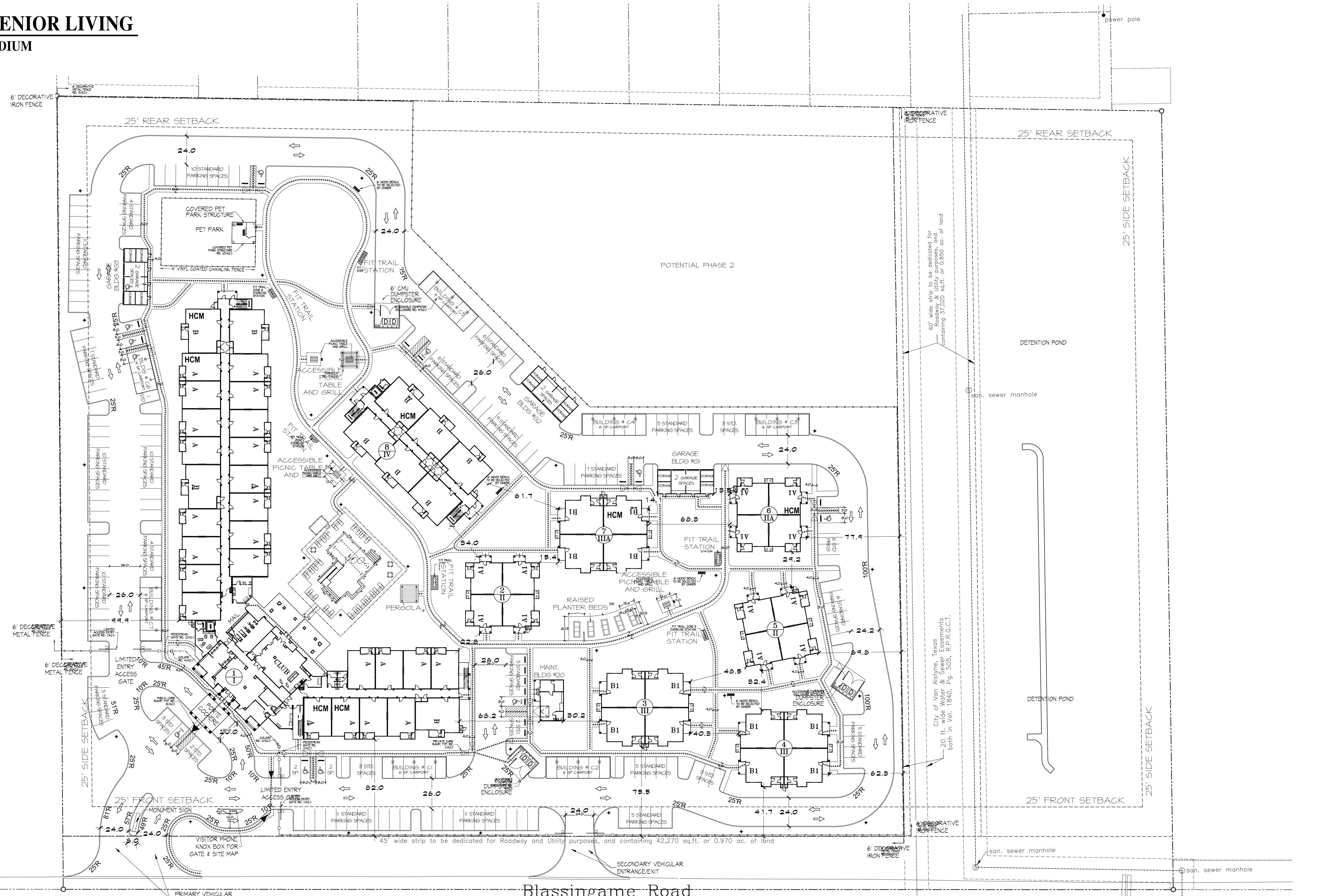
Financing Participants	Funding Description	Construction Period			Permanent Period					
		Loan/Equity Amount	Interest Rate	Lien Position	Loan/Equity Amount	Interest Rate	Amortization Yrs	Term (Yrs)	Syndication Rate	Lien Position
Debt										
TDHCA	HOME	\$900,000	0%	2	\$900,000	0%	40	18		2
TDHCA	NSP	\$0	0%		\$0	0%	0	0		
TDHCA	Mortgage Revenue Bond	\$0	0%		\$0	0%	0	0		
Dougherty Mortgage	FHA 221(d)(4)	\$6,146,724	4.25%	1	\$6,250,000	4.25%	40	18		1
Third Party Equity										
Regions Bank	HTC	\$1,159,335	\$10,984,760		\$11,939,956				1.03	
Grant										
City of Van Alstyne	Property Tax Abatement	\$0			\$0					
NE Construction	HOME Matching Funds	\$50,000			\$50,000					
Deferred Developer Fee										
Palladium USA		\$1,567,053			\$508,580					
Other										
	Deferred Operating Deficit Reserve	\$0			\$0					
	Deferred Tax and Insurance Reserve	\$0			\$0					
Total Sources of Funds		\$19,648,537			\$19,648,536					
Total Uses of Funds					\$19,648,537					
		\$0	OK		\$0	OK				

Briefly describe the financing plan for the Development, including the sources and uses of funds, matching funds (if applicable), and any other financing. The information must be consistent with all other documentation in this section.

Site Plan

PALLADIUM VAN ALSTYNE SENIOR LIVING

VAN ALSTYNE, TX - PALLADIUM



PARKING PROVIDED
 OPEN = 182 SPACES (9 HC)
 CARPORT = 40 SPACES (1 HC)
 GARAGE = 6 SPACES (1 HC)
 TOTAL = 228 SPACES (11 HC)

NOTE: HC = ACCESSIBLE PARKING
 ACCESSIBLE PARKING IS INCLUDED IN TOTAL

BUILDING LABEL	I	II	III	IV	TOTAL # OF RESIDENTIAL BLDGS	
NUMBER OF STORIES	3	1	1	3		
NUMBER OF BUILDINGS	1	3	3	1	8	
					TOTAL # OF UNITS	
					TOTAL SF/UNIT TYPE	
A	72				72	52704
A1		12			12	8388
B	18			18	36	36900
B1			12		12	11664
TOTAL	90	12	12	18	132	109,656

UNIT LABEL	UNIT TYPE	# OF BEDROOMS	# OF BATHS	SF PER UNIT
A	1	1	1	732
A1	1	1	1	699
B	2	2	2	1025
B1	2	2	2	972

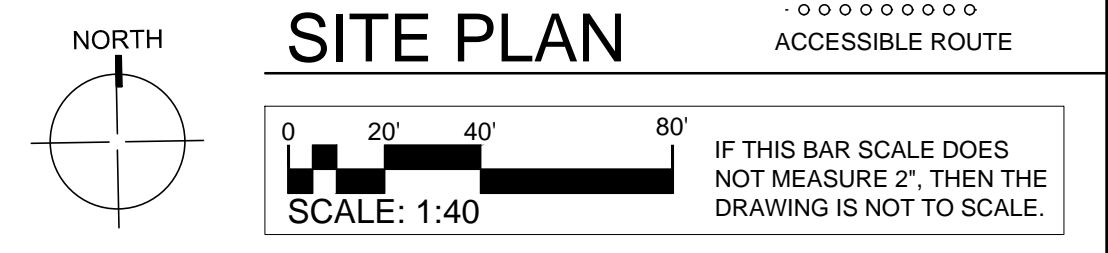
Blossingame Road

FLOOD ZONE ZONE "X" AREA OF MINIMAL FLOOD HAZARD MAP #48187C0230F EFFECTIVE NOVEMBER 27TH, 2007

THIS SITE DOES NOT FALL WITH IN A FLOOD PLAN

5 = BLDG #
 III = BLDG TYPE

PARKING SPACES ARE 9X18 FEET TYPICAL.



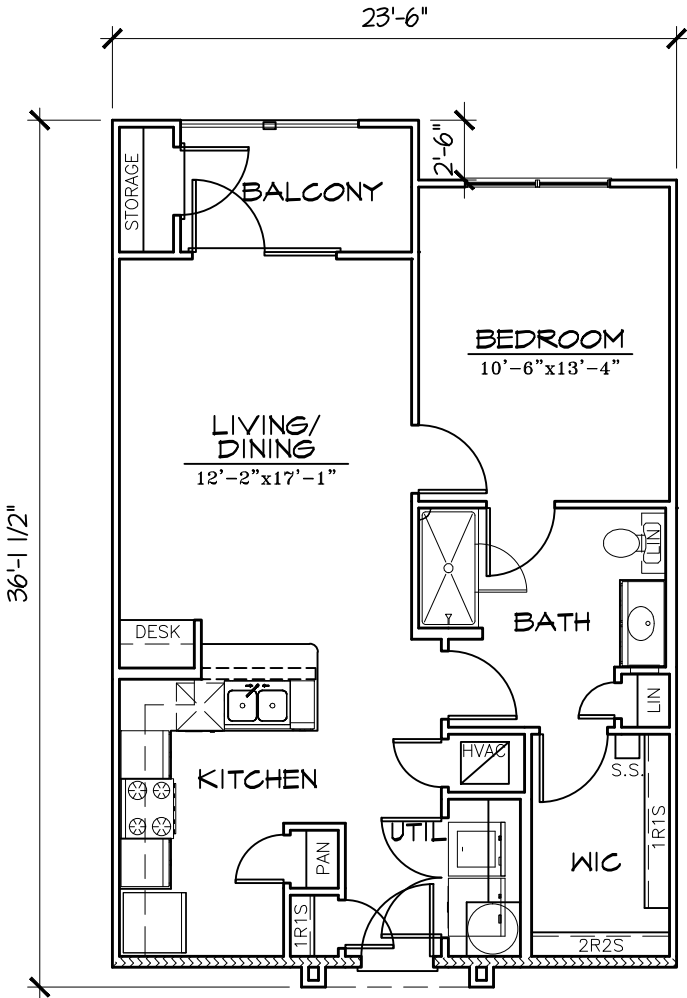
ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION

KELLY GROSSMAN
 ARCHITECTS, L.L.C.

260 ADDIE ROY ROAD SUITE 210 AUSTIN, TEXAS 78746 PH: +1.512.927.3397

Unit Plans

FINAL SPECIFICATIONS FOR ALL UNITS SHALL HAVE:
ENERGY-STAR APPLIANCES, R-15 WALLS AND R-30 CEILINGS.



UNIT A FLOOR PLAN

ONE BEDROOM/ONE BATH 1/8"

732 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

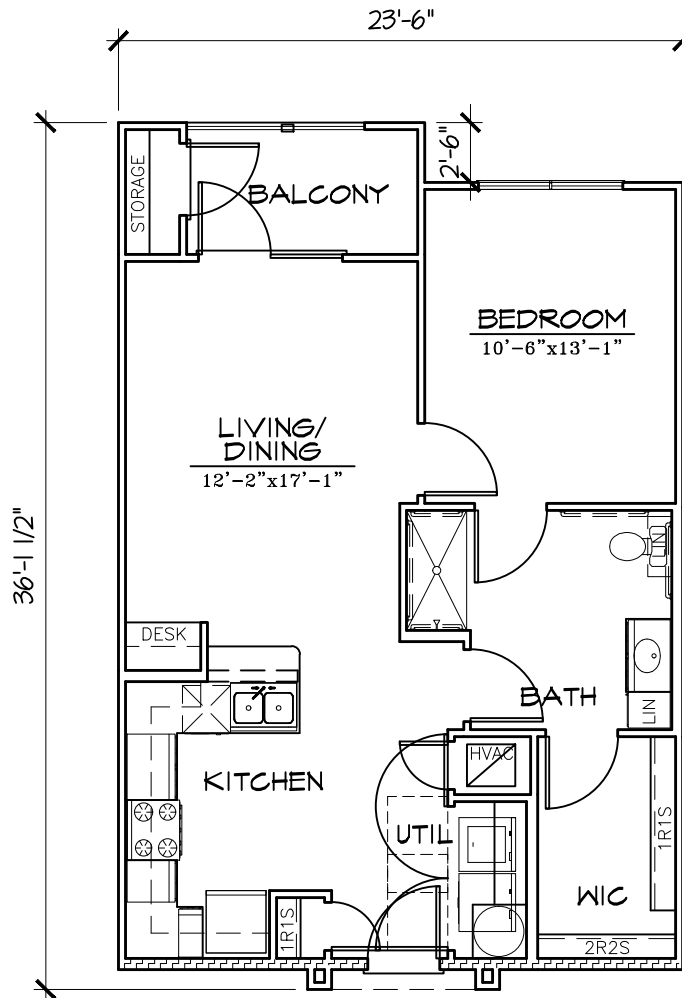
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KELLY GROSSMAN

A R C H I T E C T S , L L C

5900 SOUTHWEST PARKWAY BUILDING FOUR SUITE 420 AUSTIN, TEXAS 78735 ph: +1.512/327.3397

FINAL SPECIFICATIONS FOR ALL UNITS SHALL HAVE:
ENERGY-STAR APPLIANCES, R-15 WALLS AND R-30 CEILINGS.



UNIT A-HC FLOOR PLAN

ONE BEDROOM/ONE BATH

1/8"

732 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

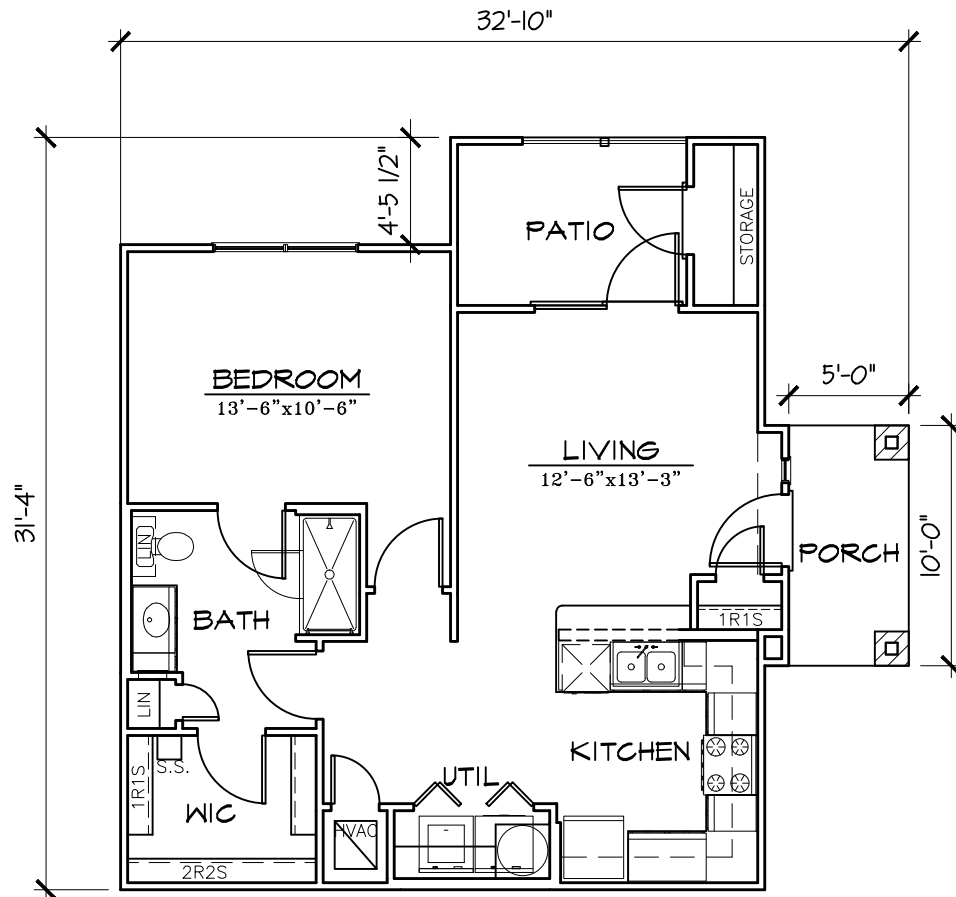
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UNIT A1 FLOOR PLAN

ONE BEDROOM/ONE BATH 1/8"

699 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

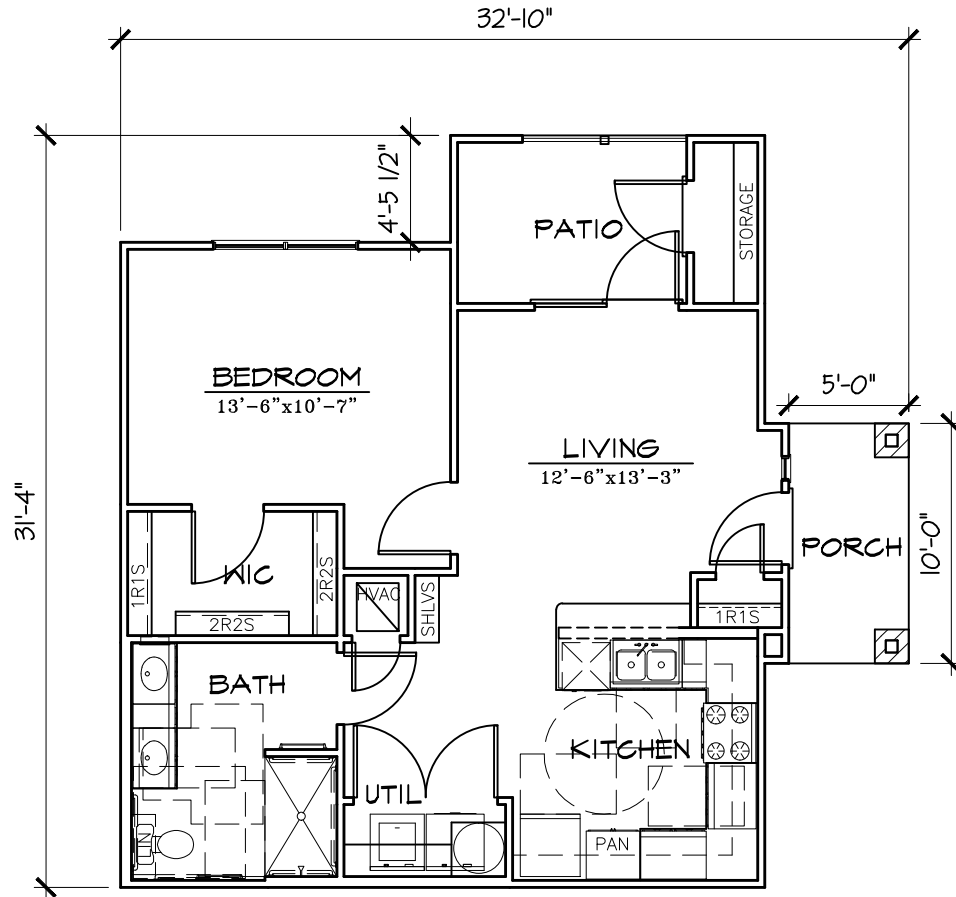
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UNIT A1-HC FLOOR PLAN

ONE BEDROOM/ONE BATH 1/8"

699 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

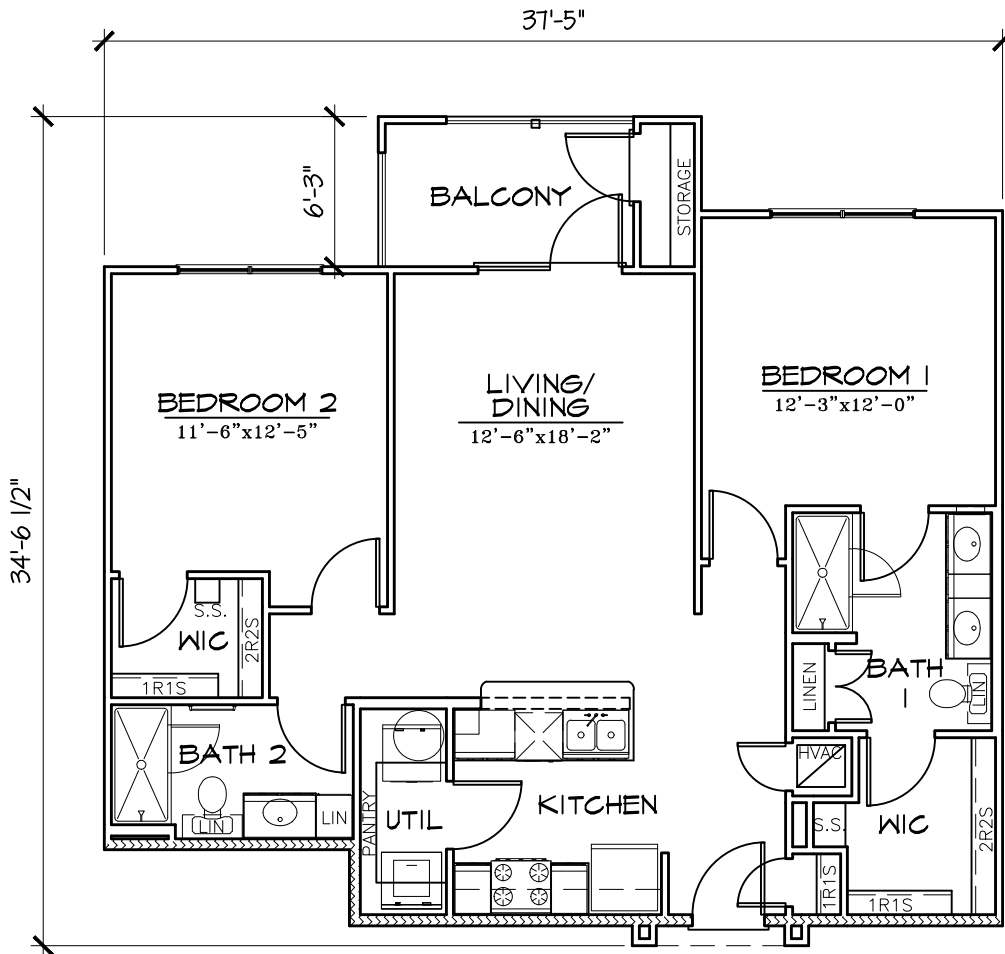
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UNIT B FLOOR PLAN

TWO BEDROOM/TWO BATH 1/8"

1025 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

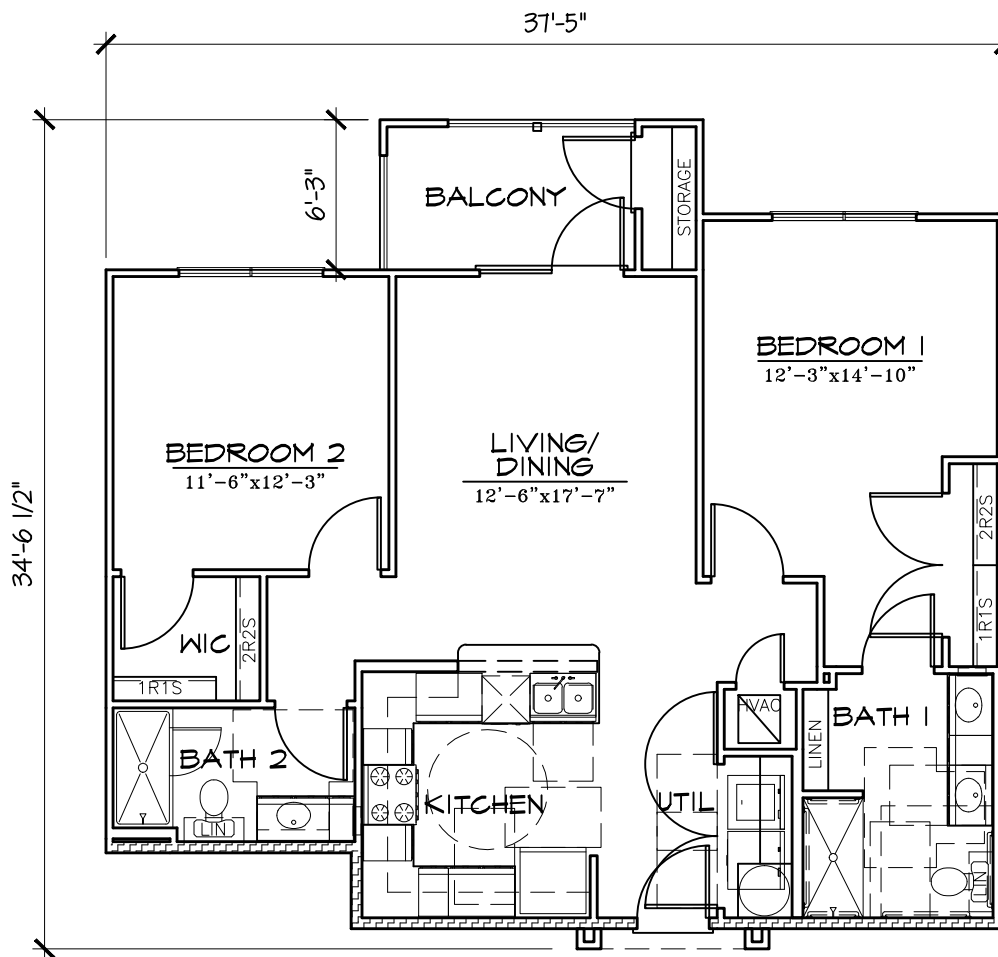
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ENERGY-STAR APPLIANCES, R-15 WALLS AND R-30 CEILINGS.



UNIT B-HC FLOOR PLAN

TWO BEDROOM/TWO BATH

1/8"

1025 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

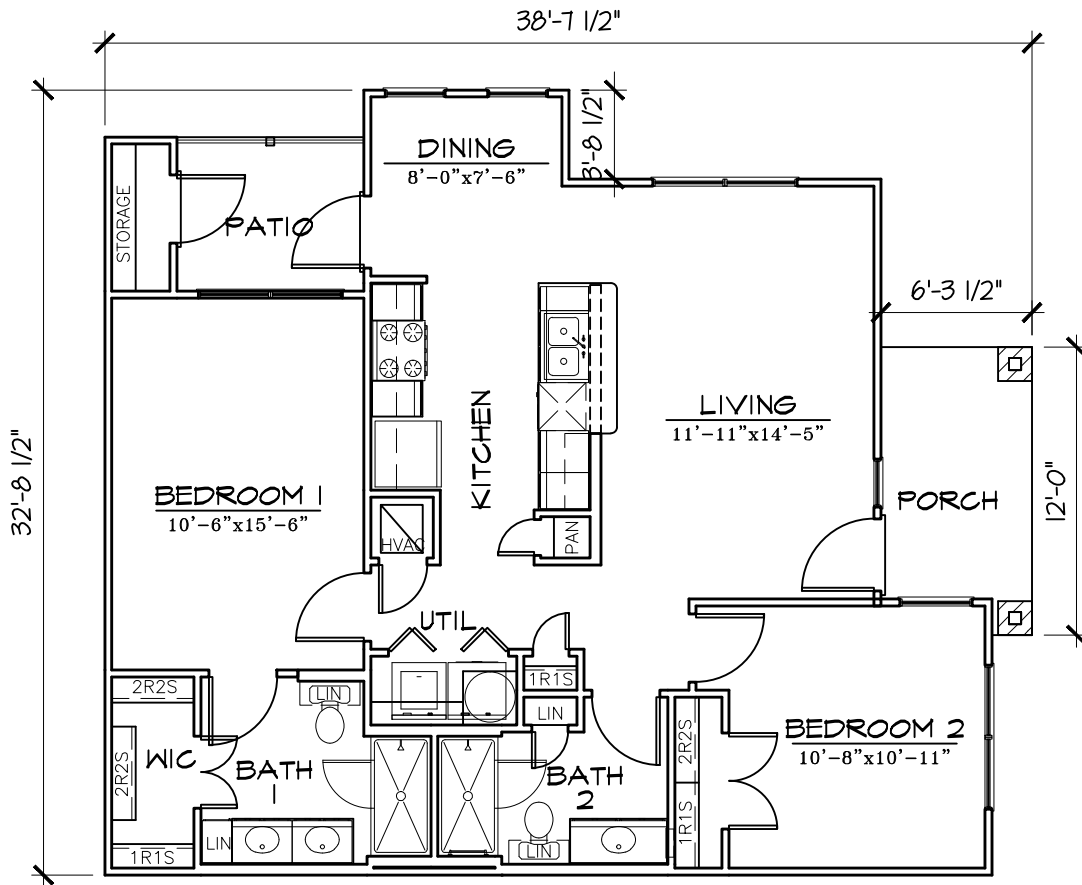
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5900 SOUTHWEST PARKWAY BUILDING FOUR SUITE 420 AUSTIN, TEXAS 78735 ph: +1.512/327.3397

FINAL SPECIFICATIONS FOR ALL UNITS SHALL HAVE:
ENERGY-STAR APPLIANCES, R-15 WALLS AND R-30 CEILINGS.



UNIT B1 FLOOR PLAN

TWO BEDROOM/TWO BATH 1/8"

972 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

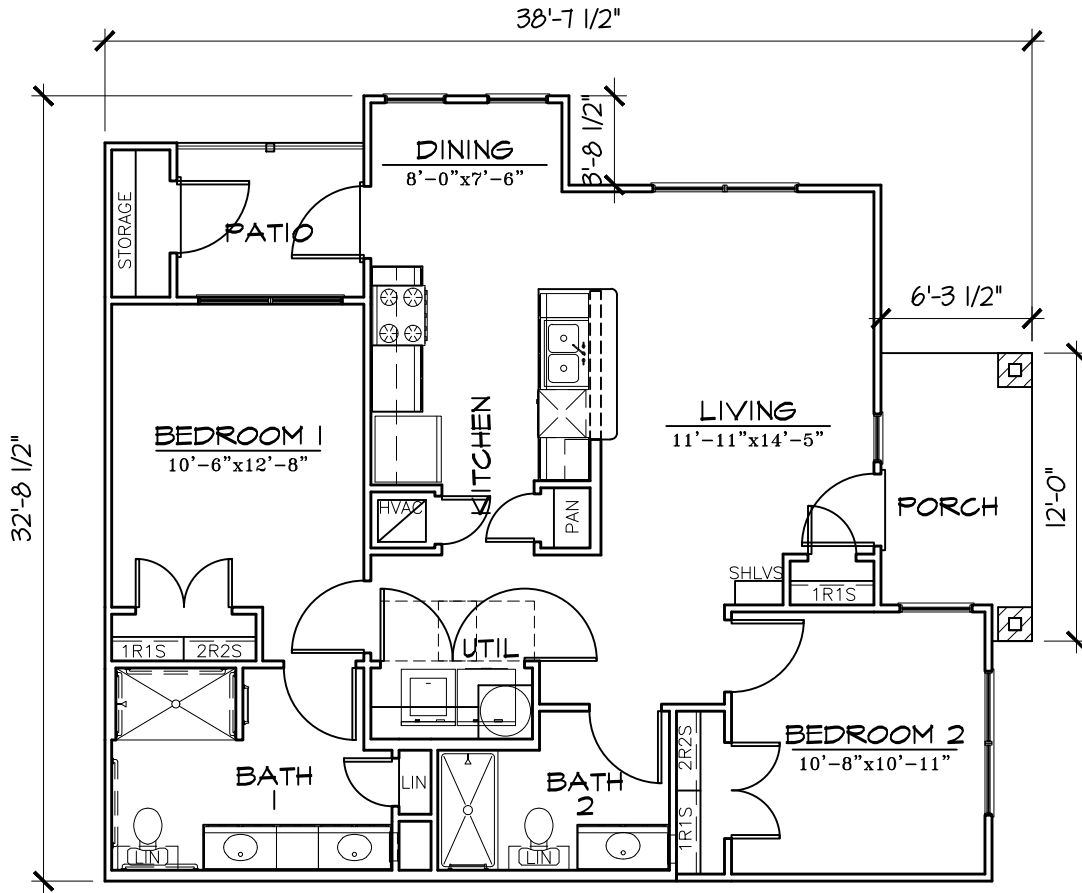
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FINAL SPECIFICATIONS FOR ALL UNITS SHALL HAVE:
ENERGY-STAR APPLIANCES, R-15 WALLS AND R-30 CEILINGS.



UNIT B1-HC FLOOR PLAN

TWO BEDROOM/TWO BATH 1/8"

972 SQ. FT

VAN ALSTYNE

Van Alstyne, Texas

PALLADIUM

• ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •

KELLY GROSSMAN

A R C H I T E C T S , L L C

5900 SOUTHWEST PARKWAY BUILDING FOUR SUITE 420 AUSTIN, TEXAS 78735 ph: +1.512/327.3397

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding a material amendment to the Housing Tax Credit/HOME Application for The Reserves at Preston Trails (#15086).

RECOMMENDED ACTION

WHEREAS, The Reserves at Preston Trails received a 9% Housing Tax Credit (“HTC”) award and HOME funds in 2015 for the new construction of 112 units in the City of Wolfforth;

WHEREAS, the Applicant is now requesting approval for changes that trigger a material alteration to the Application under §2306.6712(d)(1) and (5) of the Texas Government Code and 10 TAC §10.405(a)(3)(A), (E) and (H), requiring Board approval and the Owner has complied with the amendment requirements therein;

WHEREAS, the requested changes do not change this Application’s priority of allocation at the time of award because the cost per square foot item has not been re-scored after award, but in this case the change would have resulted in a two point reduction and the Application would have remained competitive;

WHEREAS, no other changes proposed would have had a negative impact on scoring or feasibility; and

WHEREAS, the Applicant’s representation indicates that the changes are a result of a more detailed analysis of the rental market and further discussions with the syndicator;

NOW, therefore, it is hereby

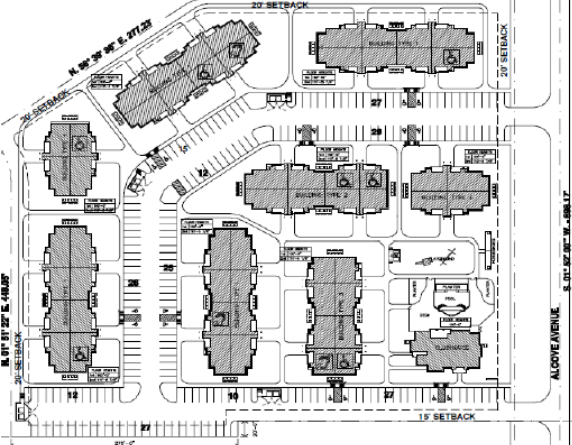
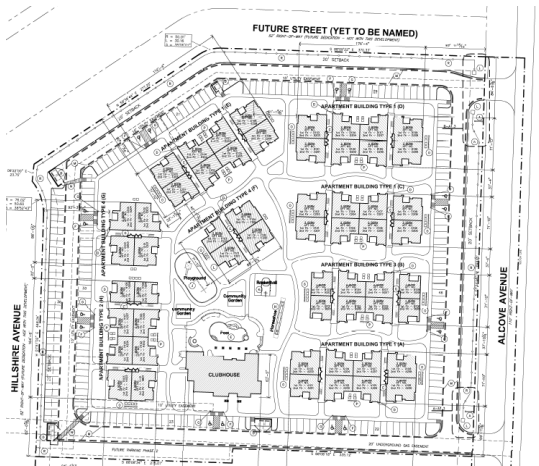
RESOLVED, that the requested material application amendment of the HTC/HOME application for The Reserve at Preston Trails is approved subject to the Department’s pre-closing checklist reviews, as presented to this meeting and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

An Application for The Reserves at Preston Trails was submitted and approved for a 9% HTC allocation and a HOME award during the 2015 competitive cycle. The Application proposed the new construction of 112 multifamily units in Wolfforth, Lubbock County. The Development

Owner, OPG Preston Trails Partners, LLC (through its consultant, Alyssa Carpenter) has requested approval for changes to the site plan, unit and building plans, development costs and financing structure that have occurred since Application.

Revisions to the site plan include relocation of the clubhouse to a central location on the site, and relocation of residential buildings so that they are all located together inside a parking drive. Additionally, the Applicant also requests to change the unit and building plans to now include only one unit plan for each unit type, whereas previously there were two unit plans for each unit type. According to the Applicant, the new unit and building plans allow for the removal of interior staircases in the second floor units which will reduce utility bills for second floor residents. Breezeway entrances are now included for second floor units. In addition to the revised unit and building plans, the Applicant provided revised financial exhibits reflecting increased construction costs and changes to the permanent financing structure. The amendment letter indicates that the result of the changes requested in this amendment are the result of a more detailed analysis of the rental market after Application was made, and based on discussions with the syndicator. A summary of the changes follows:

Material Alterations as defined in 2306.6712(d) and 10 TAC §10.405(a)(3)	
Application or Latest UW Analysis	Amendment
<p><u>Significant modification to the site plan</u></p> <p>8 residential buildings 112 units 119,960 net rentable square footage</p> 	<p>8 residential buildings 112 units 120,144 net rentable square footage</p> 

Material Alterations as defined in 2306.6712(d) and 10 TAC §10.405(a)(3)

Application or Latest UW Analysis

Amendment

Significant modification of the architectural design of the Development



Significant increases in development costs or changes in financing that affect the Department's direct loan financing structure or result in reductions of credit

But for the increase in development cost the HOME loan and/or credit amount may have been reduced

Sources and Uses of Funds

Description	Loan/Equity Amount	Interest Rate	Amort	Term	Syndication Rate
Capital One	\$3,665,000	6.25%	30	15	
TDHCA HOME	\$700,000	3.00%	30	15	
City of Wolforth EDC	\$53,760	3.00%	30	15	
McPherson Construction-cash flow loan	\$27,250	0.00%	0	0	
Red Stone – Equity	\$12,656,834				\$0.91
Deferred Developer Fee	\$867,541				
TDC	\$17,970,385				

Sources and Uses of Funds

Description	Loan/Equity Amount	Interest Rate	Amort	Term	Syndication Rate
BBVA Compass	\$3,325,000	5.40%	35	18	
TDHCA HOME	\$700,000	3.00%	30	15	
City of Wolforth EDC	\$53,760	3.00%	30	5	
McPherson Construction-cash flow loan	\$27,250	0.00%	0	0	
Red Steon – Equity	\$14,708,354				\$1.0575
Deferred Developer Fee	\$79,153				
TDC	\$18,891,517				

Additional Financing Changes Identified Since Application

	Application UW	Amendment UW
Total Cost per Unit	\$74,451	\$90,275
Cost per Square Foot	\$69.40	\$84.16

The architect's revised design indicates the clubhouse size will be increased from 3,914 to 5,112 square feet. There are also changes in the location of the parking in the revised site plan. In the original plan, the majority of the parking is located in the center of the development. On the revised site plan, the parking is relocated to the perimeter of the Development. The owner states these revisions create a more cohesive design and improves the marketability.

The amendment changes requested do not affect the number of units and buildings for the project. However, the original architectural plans included two designs for each unit type. In the revised

plans, there will be only one design for each unit type. These revisions will increase the net rentable area from 119,960 to 120,144 resulting in an overall increase of 184 square feet (<1%). Revised financial exhibits submitted with the amendment reflect an increase in the development costs and changes to the financing structure. According to the owner, cost increases are attributed to general construction cost increases since application, but also are due to a revised plan that proposes increasing the pool size and creating a larger covered outdoor area. Additionally, the owner states that upgraded finishes were requested of the syndicator and account for some of the cost increase as well.

Staff has reviewed the original application and scored against the changes for which approval are requested in this amendment and has determined that only the cost per square foot would have been affected if it were to be re-scored today. Typically cost increases as a result of market conditions are not re-scored after award. In this case staff re-evaluated the potential impact and found the current cost per square foot would have had a two point reduction had it been used at the time of award. This Application was seven points ahead of the first application on the waiting list for this sub-region.

The changes in development costs and financing as a result of this amendment have been re-evaluated by the Department's Real Estate Analysis Division and the development remains financially feasible. The Addendum to the Underwriting Report can be found on the REA website at <http://www.tdhca.state.tx.us/rea/index.htm>. The HOME loan structure remains unchanged. The amount of first lien debt and debt service proposed in the amendment has decreased creating less risk to the Department's HOME loan.

March 15, 2016

Lee Ann Chance
TDHCA
PO Box 13941
Austin, TX

RE: Amendment Request for 15086 The Reserves at Preston Trails

Dear Ms. Chance:

Please find this request for an amendment to 15086 The Reserves at Preston Trails in Wolfforth. We are requesting changes to the site plan, building plans, and units. These changes were made as a result of a more detailed analysis of the rental market and discussions with the syndicator. The syndicator believes that this property should have an upgraded design to draw residents from Lubbock to Wolfforth.

Change to Site Plan

The site is 8.2 acres with 112 units in 8 residential buildings and 1 nonresidential clubhouse building. The original site plan had a 3,194 sf clubhouse that was located off Alcove Rd with a parking drive that separated 4 residential buildings from the rest of the development. The new plan has the same number of buildings but relocates the clubhouse centrally on the site and all residential buildings are located together inside a parking drive located on the perimeter of the site. This plan creates a more cohesive development with better marketability. The clubhouse square footage has also increased to 5,112 sf, which will be a benefit to the residents.

Change to Unit and Building Plans

The original application had 12 1/1 units, 56 2/2 units, and 44 3/2 units with two plans for each bedroom type to allow for an interior staircase in the second floor units. In the new plans, access to the second floor units have been moved to exterior staircases and breezeways and there is now one plan for each unit type. These changes create a more open floor plan and layout, which we believe is more desirable for this climate and rental population. The removal of the interior staircase in the second floor units will also reduce utility bills for second floor residents. The change to exterior staircases alters the building plan so that there are breezeway entrances for the second floor units. The property has the same number of units per bedroom type in each building.

Cost Changes

These changes have increased construction costs. In addition to general construction cost increases since application, a larger clubhouse is proposed along with a larger pool and larger covered outdoor area. The syndicator also requested upgraded finishes, which includes upgraded laminate vinyl plank flooring in all areas except for the bedrooms and upgraded LED lighting fixtures.

These changes have not yet been implemented as we are waiting for TDHCA approval prior to closing. The check for the amendment fee will be delivered to TDHCA. Thank you for your attention to this request. Please contact us with any questions.

Regards,



Alyssa Carpenter

February 24, 2016

Audrey Watson
Overland Property Group, LLC
5345 W. 151st Terrace
Leawood, KS 66224

Re: The Reserves at Preston Trails – Investor Requirements

Audrey,

Per your request, I am formalizing our requests to improve certain aspects of The Reserves at Preston Trails in Wolfforth, Texas. In order to attract potential residents to the community of Wolfforth, which is located in the outskirts of Lubbock, we encourage improvements to the clubhouse, site plan and general building finishes. We reviewed your proposed architectural changes and believe this will be a better overall design for the property.

We appreciate your cooperation in this matter. We value our partnership with you on The Reserves at Preston Trails and look forward to working with you on future projects.

Kind regards,



Drew Foster
Director of Acquisitions
Red Stone Equity Partners

PROJECT SUMMARY

BUILDING LABEL	BUILDING TYPE	UNIT LABEL	BUILDING SQUARE FOOT	NO. OF BUILDINGS	TOTAL PROJECT SF	TOTAL HTD. PROJECT SF
CLUBHOUSE	CLUBHOUSE		HTD 5,112 sf UNH 150 sf	1	HTD 5,112 sf UNH 150 sf	HTD 5,112 sf
Type 1	2 FLOORS 8-2BR,8-3BR	A,B	HTD 17,832 sf UNH 4,064 sf	4	HTD 71,328 sf UNH 16,256 sf	HTD 71,328 sf
Type 2	2 FLOORS 4-1BR,8-2BR,4-3BR	A,B,C	HTD 16,272 sf UNH 4,212 sf	1	HTD 16,272 sf UNH 4,212 sf	HTD 16,272 sf
Type 3	2 FLOORS 8-1BR,8-2BR	B,C	HTD 14,712 sf UNH 4,360 sf	1	HTD 14,712 sf UNH 4,360 sf	HTD 14,712 sf
Type 4	2 FLOORS 4-3BR,4-2BR	A,B	HTD 8,916 sf UNH 2,032 sf	2	HTD 17,832 sf UNH 4,064 sf	HTD 17,832 sf
TOTAL					154,298 sf	125,256 sf

UNHEATED IF INCLUDES: EXTERIOR STORAGE, PATIOS, BALCONIES & BREEZEWAYS

BUILDING TYPE 1

UNIT LABEL	UNIT TYPE	UN-HTD SF PER UNIT	HEATED SF PER UNIT	NUMBER UNITS	UN-HTD SF	HEATED SF	TOTAL SF
A	3-BED, 2-BATH	247 sf	1,198 sf	4	988 sf	4,792 sf	
B	2-BED, 2-BATH	261 sf	1,031 sf	4	1,044 sf	4,124 sf	
TOTAL PER FLOOR (2 FLOORS)				8	2,032 sf	8,916 sf	10,948 sf
BUILDING TOTALS				16	4,064 sf	17,832 sf	21,896 sf

UNHEATED IF INCLUDES: EXTERIOR STORAGE, PATIOS, BALCONIES & BREEZEWAYS

BUILDING TYPE 2

UNIT LABEL	UNIT TYPE	UN-HTD SF PER UNIT	HEATED SF PER UNIT	NUMBER UNITS	UN-HTD SF	HEATED SF	TOTAL SF
A	3-BED, 2-BATH	247 sf	1,198 sf	2	494 sf	2,396 sf	
B	2-BED, 2-BATH	261 sf	1,031 sf	4	1,044 sf	4,124 sf	
C	1-BED, 1-BATH	284 sf	808 sf	2	568 sf	1,616 sf	
TOTAL PER FLOOR (2 FLOORS)				8	2,106 sf	8,136 sf	10,242 sf
BUILDING TOTALS				16	4,212 sf	16,272 sf	20,484 sf

UNHEATED IF INCLUDES: EXTERIOR STORAGE, PATIOS, BALCONIES & BREEZEWAYS

BUILDING TYPE 3

UNIT LABEL	UNIT TYPE	UN-HTD SF PER UNIT	HEATED SF PER UNIT	NUMBER UNITS	UN-HTD SF	HEATED SF	TOTAL SF
B	2-BED, 2-BATH	261 sf	1,031 sf	4	1,044 sf	4,124 sf	
C	1-BED, 1-BATH	284 sf	808 sf	4	1,136 sf	3,232 sf	
TOTAL PER FLOOR (2 FLOORS)				8	2,180 sf	7,356 sf	9,536 sf
BUILDING TOTALS				16	4,360 sf	14,712 sf	19,072 sf

UNHEATED IF INCLUDES: EXTERIOR STORAGE, PATIOS, BALCONIES & BREEZEWAYS

BUILDING TYPE 4

UNIT LABEL	UNIT TYPE	UN-HTD SF PER UNIT	HEATED SF PER UNIT	NUMBER UNITS	UN-HTD SF	HEATED SF	TOTAL SF
A	3-BED, 2-BATH	247 sf	1,198 sf	2	494 sf	2,396 sf	
B	2-BED, 2-BATH	261 sf	1,031 sf	2	522 sf	2,062 sf	
TOTAL PER FLOOR (2 FLOORS)				4	1,016 sf	4,458 sf	5,474 sf
BUILDING TOTALS				8	2,032 sf	8,916 sf	10,948 sf

UNHEATED IF INCLUDES: EXTERIOR STORAGE, PATIOS, BALCONIES & BREEZEWAYS

LOT COVERAGE

SITE ACRES	SITE SF	TOTAL PROJECT SF (FIRST FLOOR)	LOT COVERAGE
8.20 ACRES	357,098 sf	41,462 sf	12.0%

UNIT SUMMARY

UNIT LABEL	UNIT TYPE	TOTAL NO. OF UNITS
A	3-BED, 2-BATH	44
B	2-BED, 2-BATH	56
C	1-BED, 1-BATH	12
TOTAL		112

PARKING SUMMARY

HANDICAP PARKING STALLS	16
STANDARD PARKING STALLS	194
TOTAL PARKING STALLS	210
PARKING RATIO (STALLS/UNITS)	1.87

FLOOD PLAIN

THE HEREIN DESCRIBED PROPERTY DOES NOT LIE WITHIN THE SPECIAL FLOOD HAZARD AREAS INUNDAED BY 100 YR FLOOD AS DELINEATED ON THE FLOOD INSURANCE RATE MAP FOR THE CITY OF WOLFORTH, LUBBOCK COUNTY, TEXAS.

STORM WATER RETENTION

ON SITE STORM WATER RETENTION NOT REQUIRED

NOTES

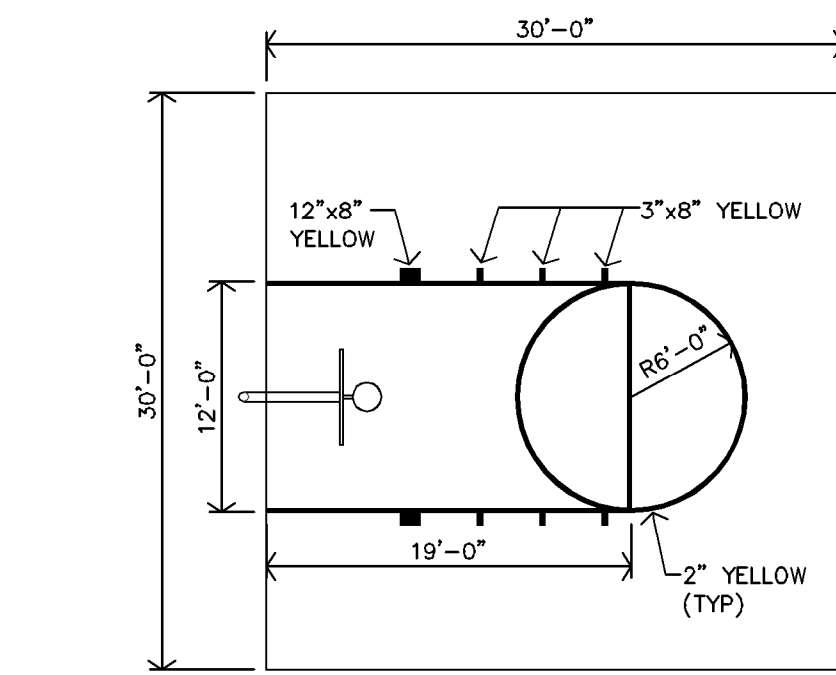
1. THE SITE PLAN MATERIALLY ADHERES TO ALL ZONING, SITE DEVELOPMENT, AND BUILDING CODE ORDINANCES.

SITE PLAN KEY NOTES

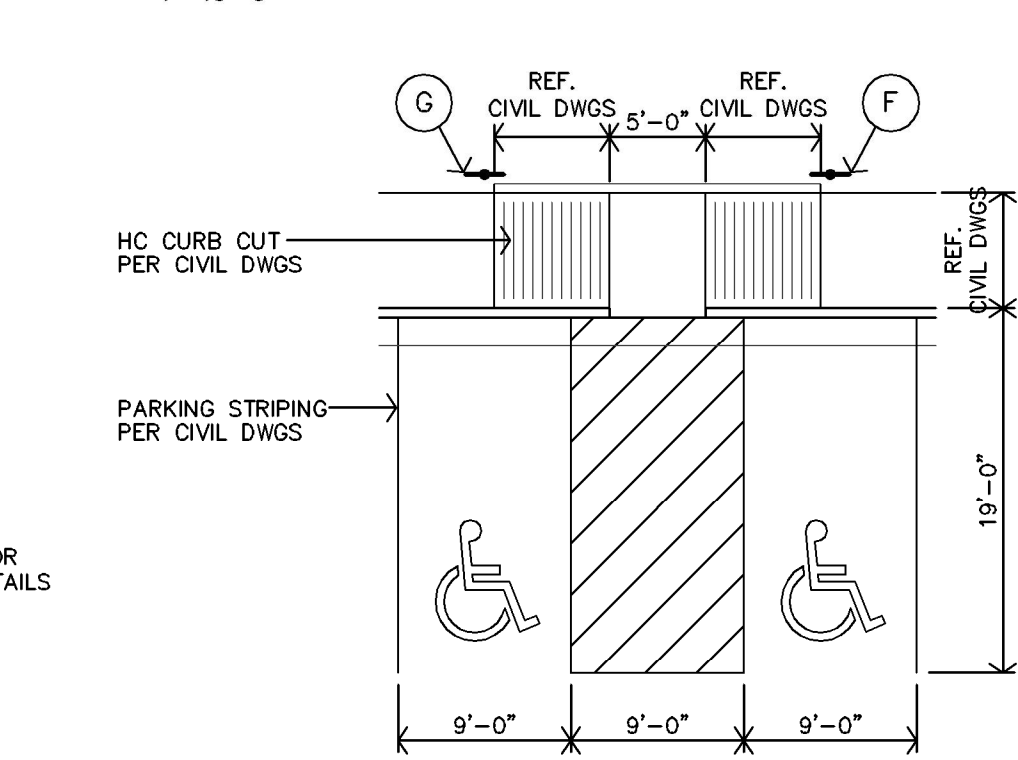
(A)	MONUMENT SIGN REF. SHEET A1.2
(B)	KNOX BOX COORD. W/ FIRE DEPT. (TYP)
(C)	MECH. CLOSET REF. & COORDINATE W/ M/E DRAWINGS (TYP)
(D)	HC TRASH ENCLOSURE REF. SHEET A1.2
(E)	POOL FIREPIT, PERGOLA & OUTDOOR KITCHEN COORDINATED W/ OWNER
(F)	NEW POLE MOUNTED H.C. PARKING SIGN MOUNT BTM. OF SIGN @ 60'A.F.F. (TYP)
(G)	NEW POLE MOUNTED H.C. "VAN" PARKING SIGN MOUNT BTM. OF SIGN @ 60'A.F.F. (TYP)
(H)	HORSESHOE REF. D-A1.1 & M-A1.2
(J)	PLAYGROUND (1) BUMPSLIDE & (1) SWING SET REF. N/O-A1.2
(K)	HALF-COURT BASKETBALL 30'x30' CONC SLAB REF. C-A1.1 & P/Q-A1.2
(L)	ENTRANCE/FENCE PLAGSTER REF. A/B/C-A1.3
(M)	FIRE LANE STRIPING PER 2009 IFC. 6" WIDE RED BACKGROUND STRIPE W/ 4" HIGH WHITE LETTERS SAYING "FIRE LANE NO PARKING", PAINTED ON RED STRIPE EVERY 40'-0" ALONG ENTIRE LENGTH OF FIRE LANE.
(N)	PAINTED STRIPING @ ACCESSIBLE ROUTE
(O)	(3) 6'long & (1) 4'long SHADE DEVICES PER (4) CONDENSING UNITS CENTER SHADE DEVICE ON CONDENSING UNITS. REF. ME DRAWINGS & F-A1.2
(P)	(2) 6'long SHADE DEVICE PER (4) CONDENSING UNITS CENTER SHADE DEVICE ON CONDENSING UNITS. REF. ME DRAWINGS & F-A1.2
(Q)	(2) 6'long SHADE DEVICE PER (2) CONDENSING UNITS CENTER SHADE DEVICE ON CONDENSING UNITS. REF. ME DRAWINGS & F-A1.2
(R)	PERIMETER FENCE, SELECTED BY OWNER & STONE PILASTERS AT ENTRY DRIVES TO MATCH BUILDING

NOTE:
CONC. SLABS @ BASKETBALL & HORSESHOE SHALL BE 4" IN. 3,500 PSI W/ 6x6-W1.2XW1.2 W/W. SLOPE ACROSS SLAB NO MORE THAN 2% (1/8" PER 12") OVER 4" IN. GRANULAR FILL (MIN.) COMPACTED OVER SUBGRADE, PREP PER SOILS REPORT.

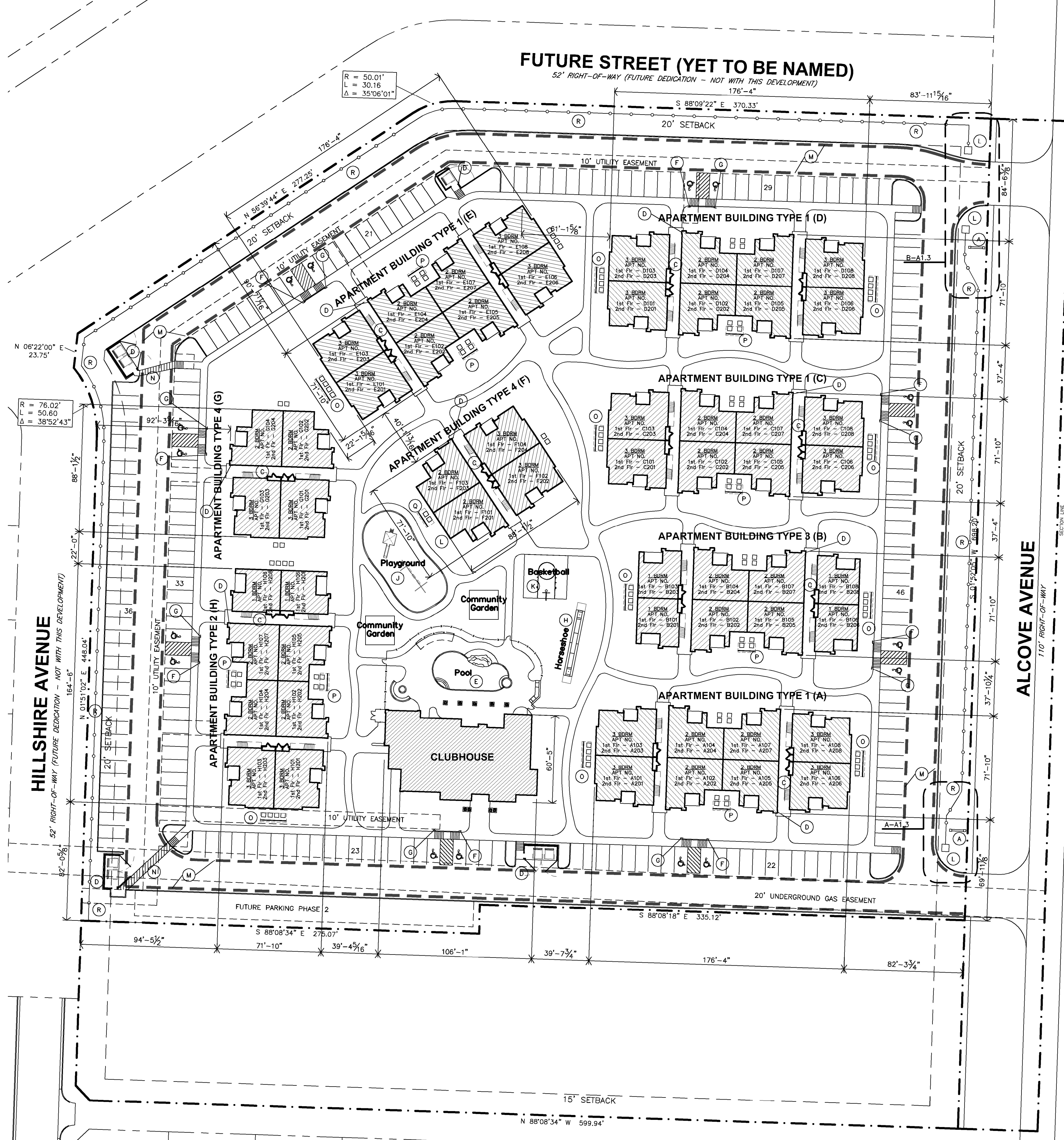
D HORSESHOE PLAN
1"=10'-0"



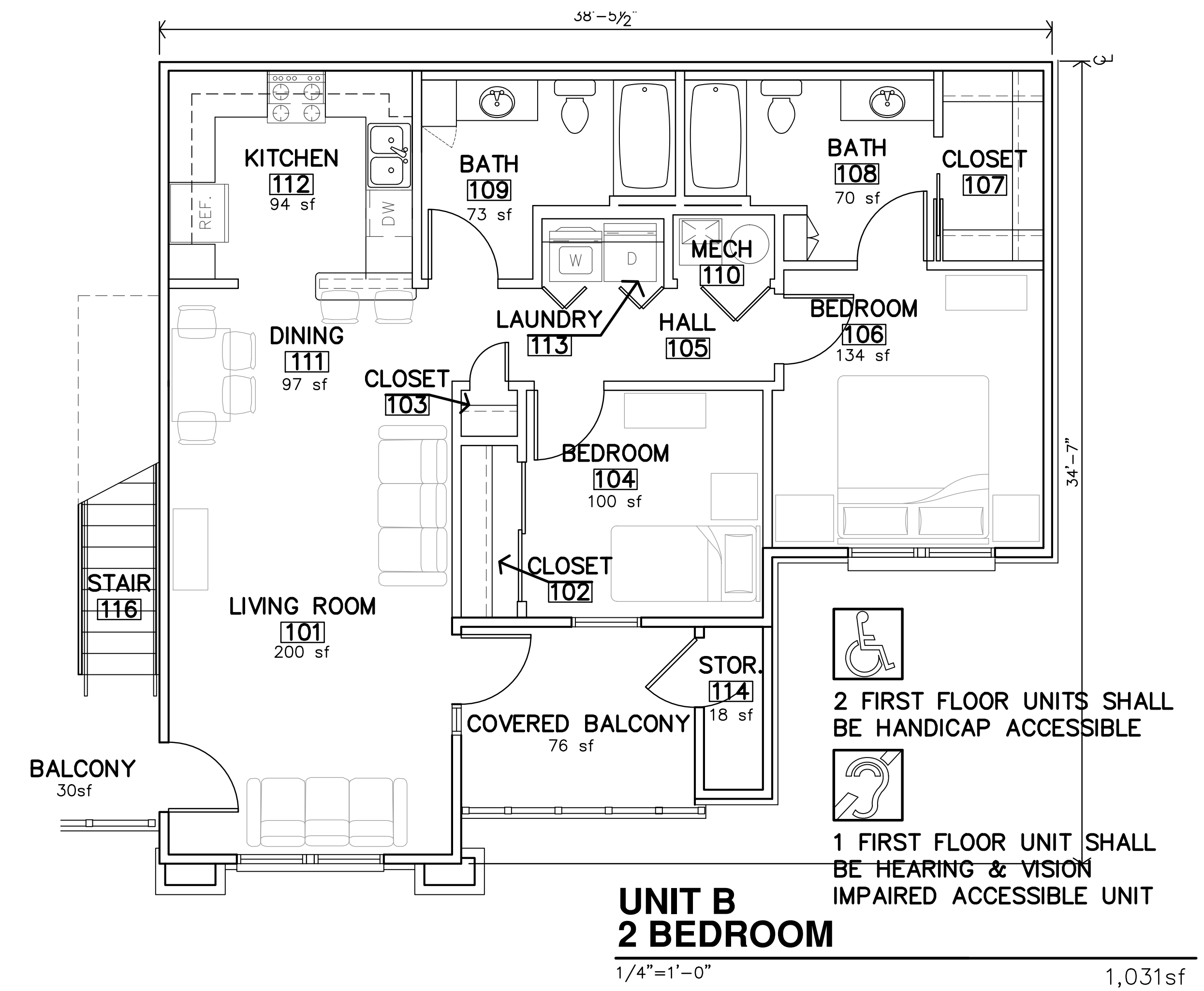
C HALF-COURT BASKETBALL PLAN
1"=10'-0"



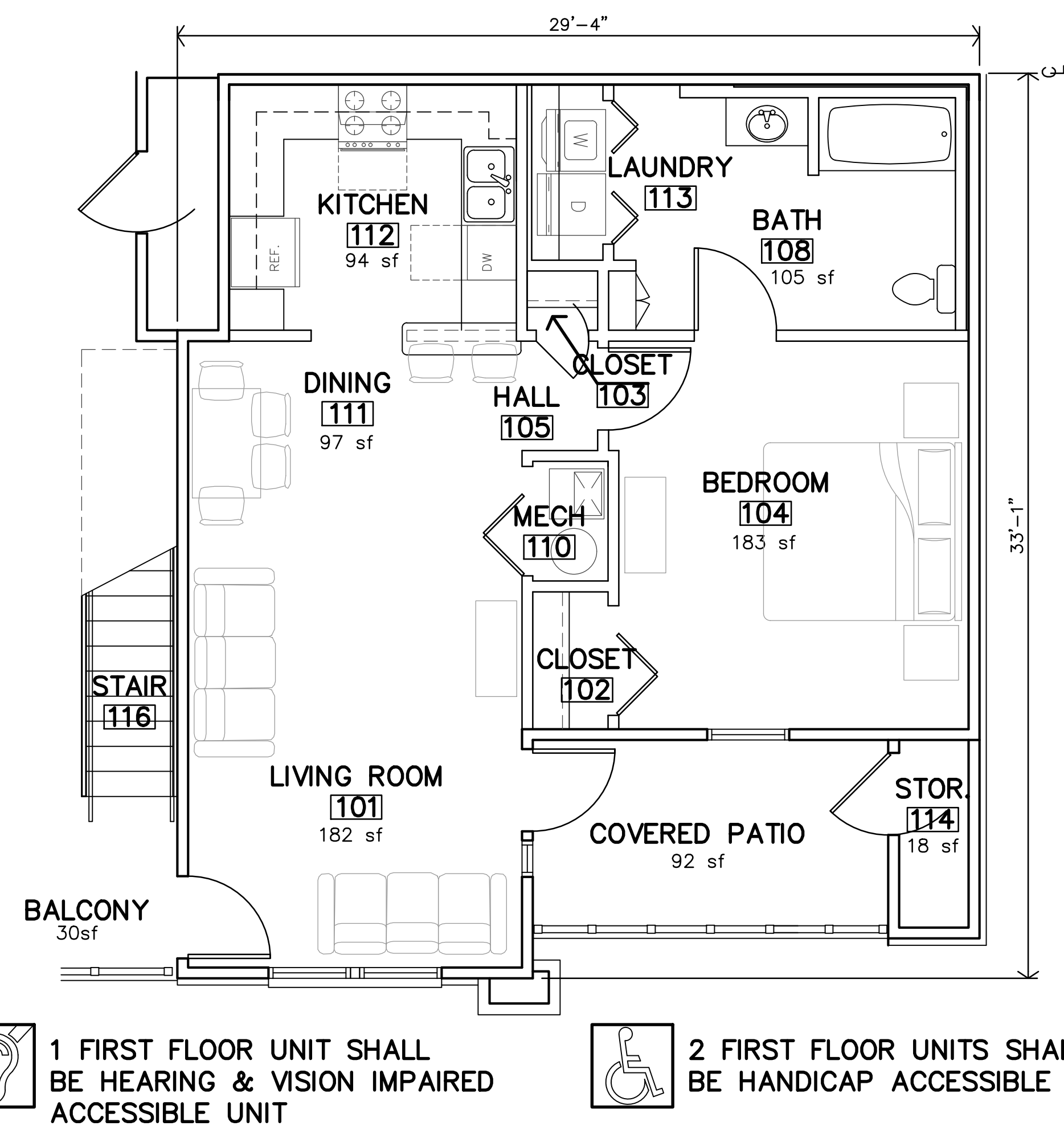
B HANDICAPPED PARKING
1"=10'-0"



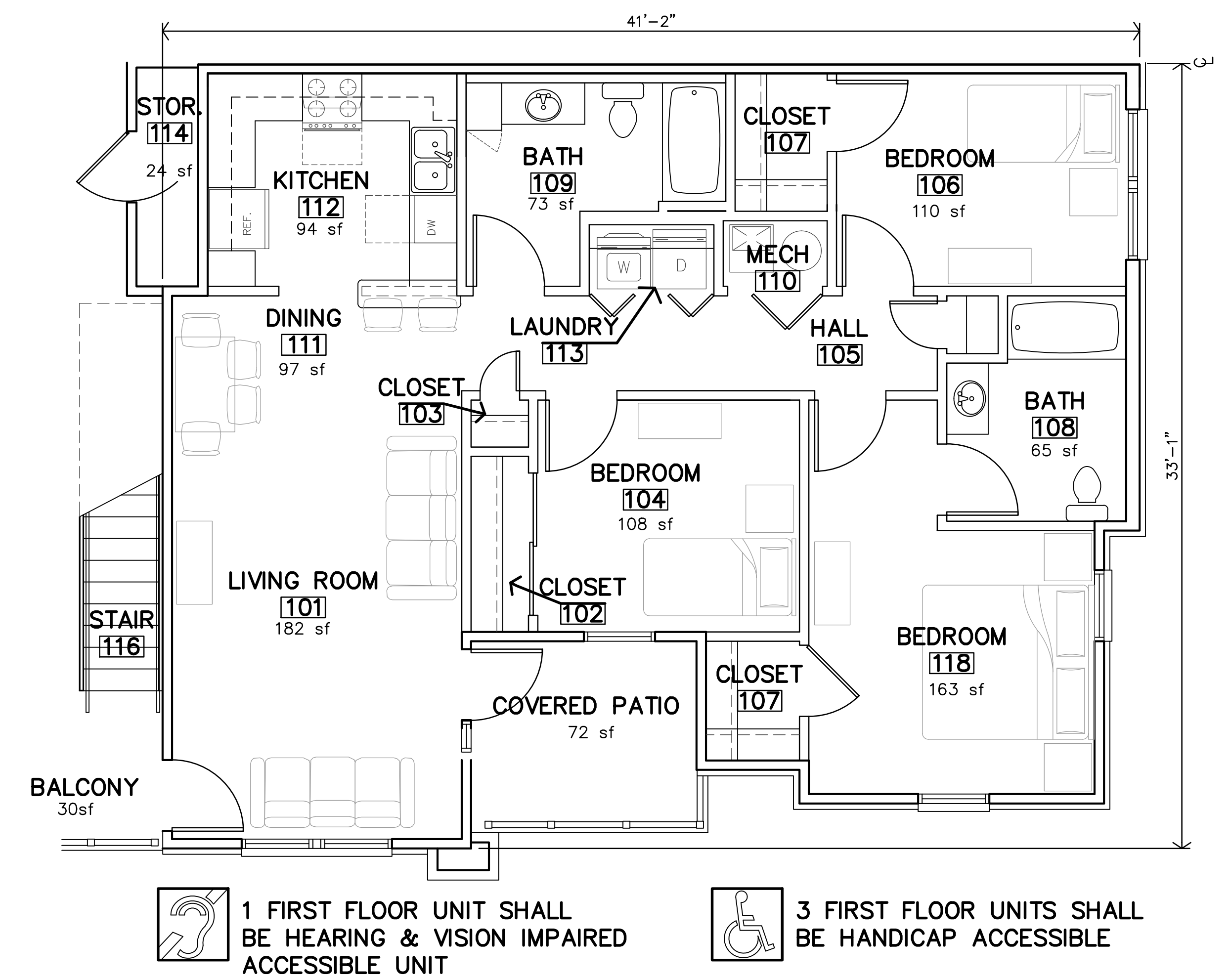
A SITE PLAN
1"=40'-0"



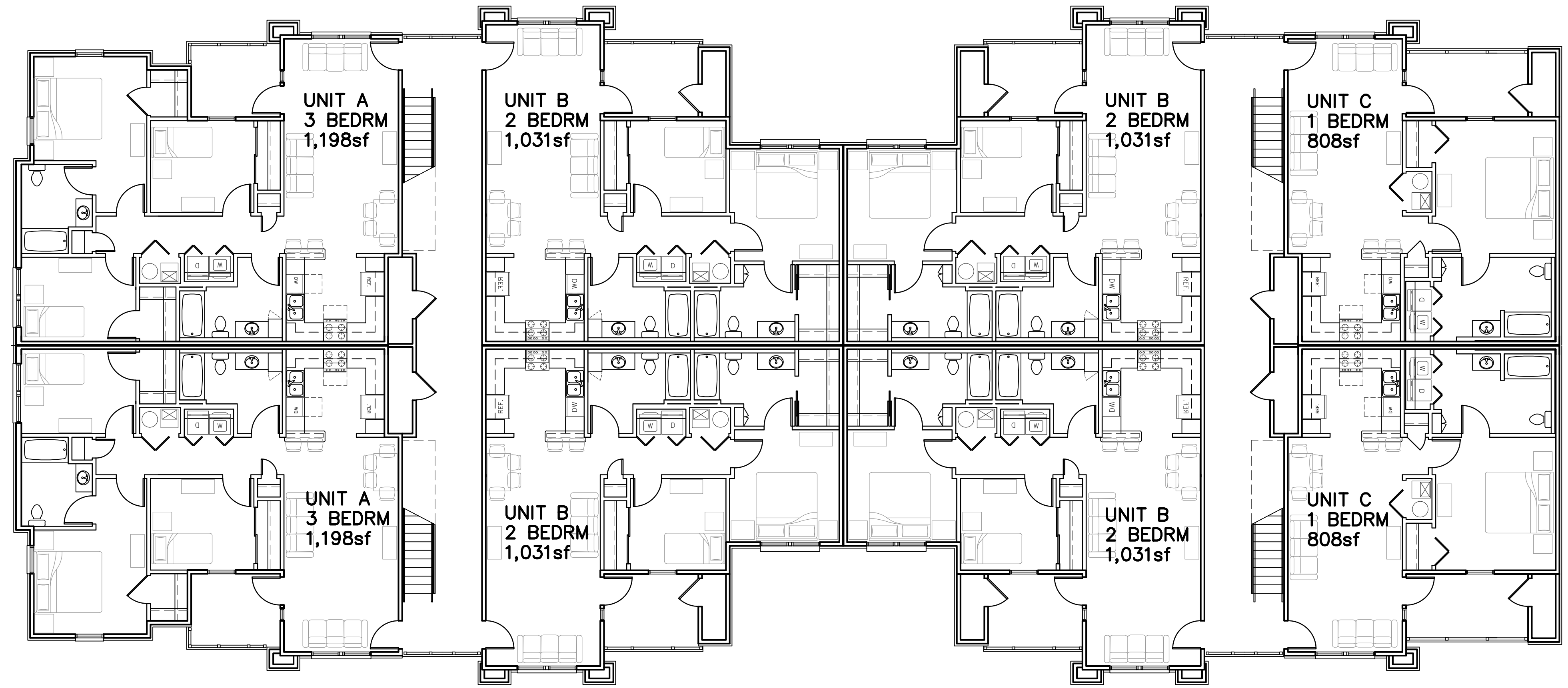
2 FIRST FLOOR UNITS SHALL BE HANDICAP ACCESSIBLE
 1 FIRST FLOOR UNIT SHALL BE HEARING & VISION IMPAIRED ACCESSIBLE UNIT



1 FIRST FLOOR UNIT SHALL BE HEARING & VISION IMPAIRED ACCESSIBLE UNIT
 2 FIRST FLOOR UNITS SHALL BE HANDICAP ACCESSIBLE

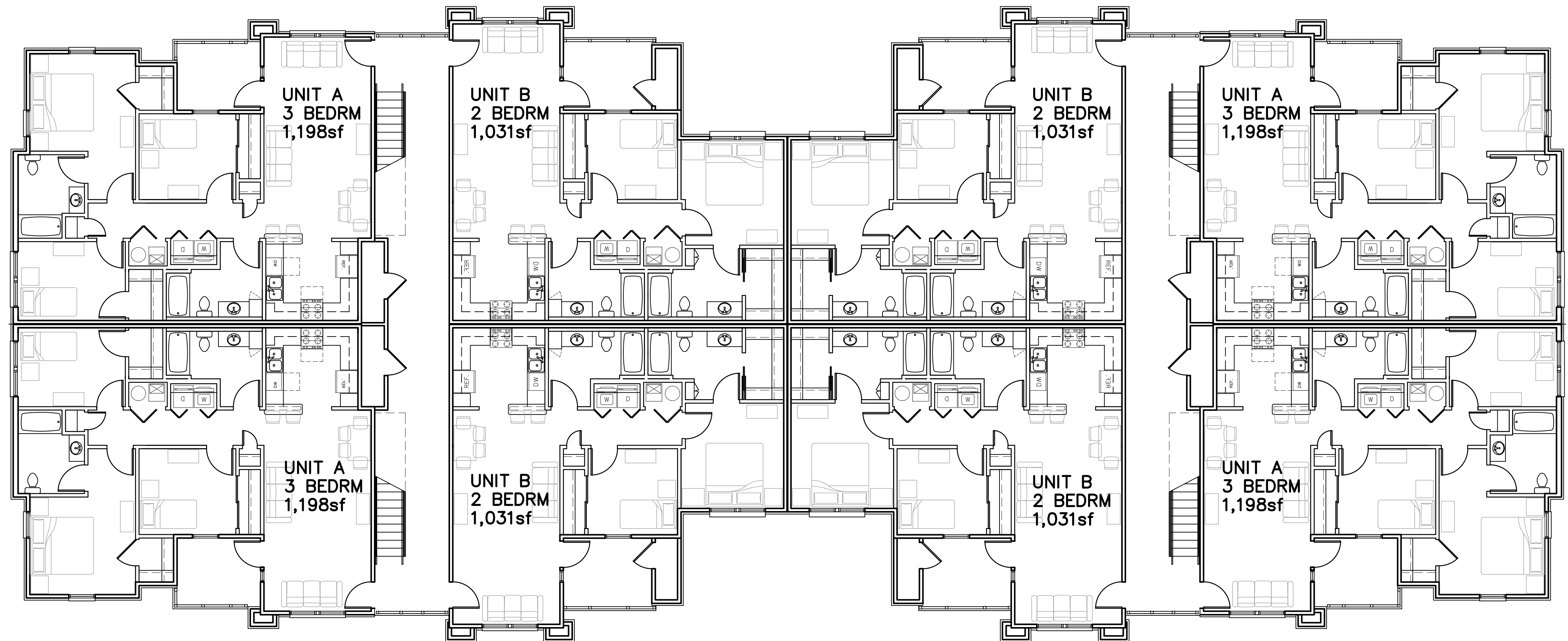


1 FIRST FLOOR UNIT SHALL BE HEARING & VISION IMPAIRED ACCESSIBLE UNIT
 3 FIRST FLOOR UNITS SHALL BE HANDICAP ACCESSIBLE



**BUILDING TYPE 2
FIRST & SECOND FLOOR PLANS**

1/8"=1'-0"

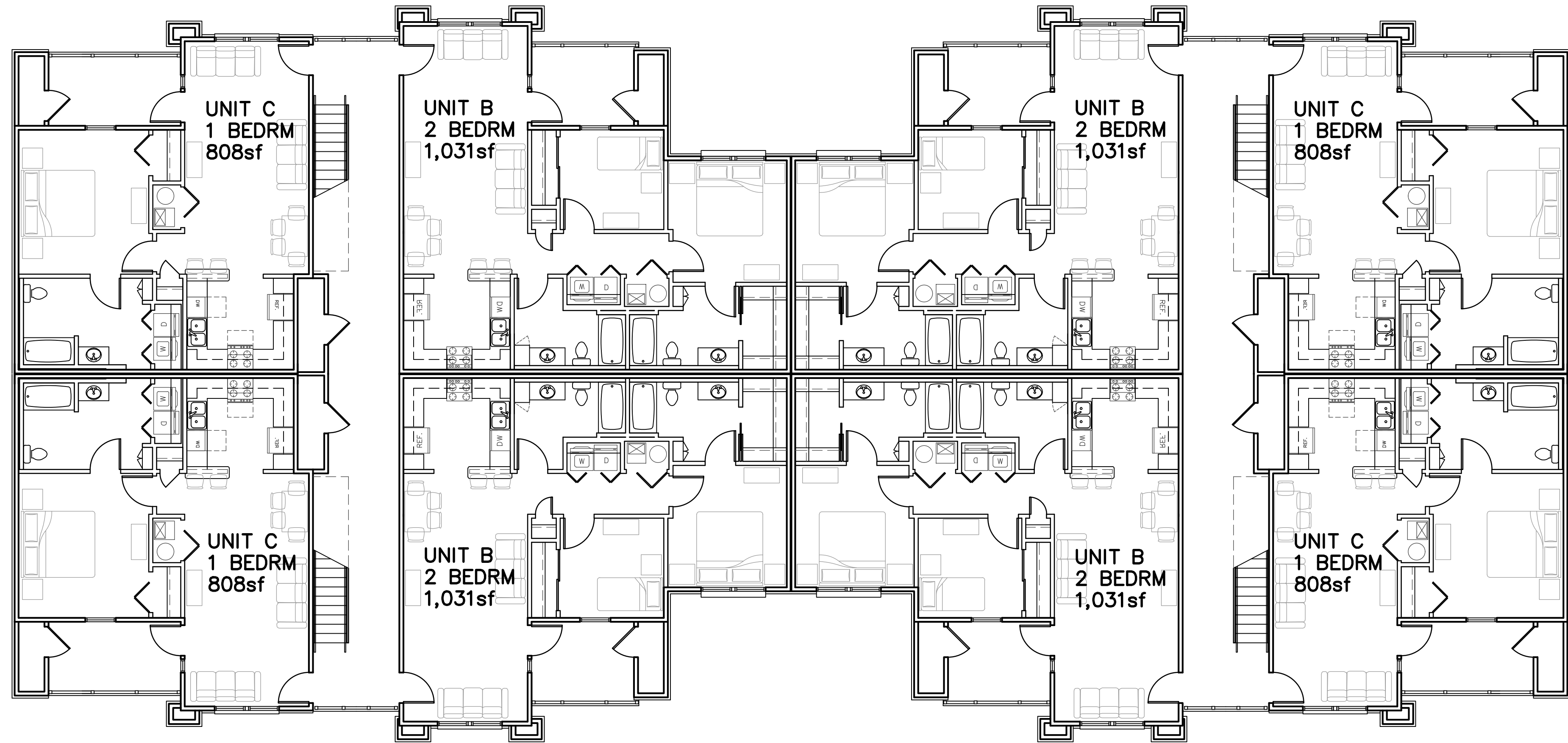


**BUILDING TYPE 1
FIRST & SECOND FLOOR PLANS**

1/8"=1'-0"

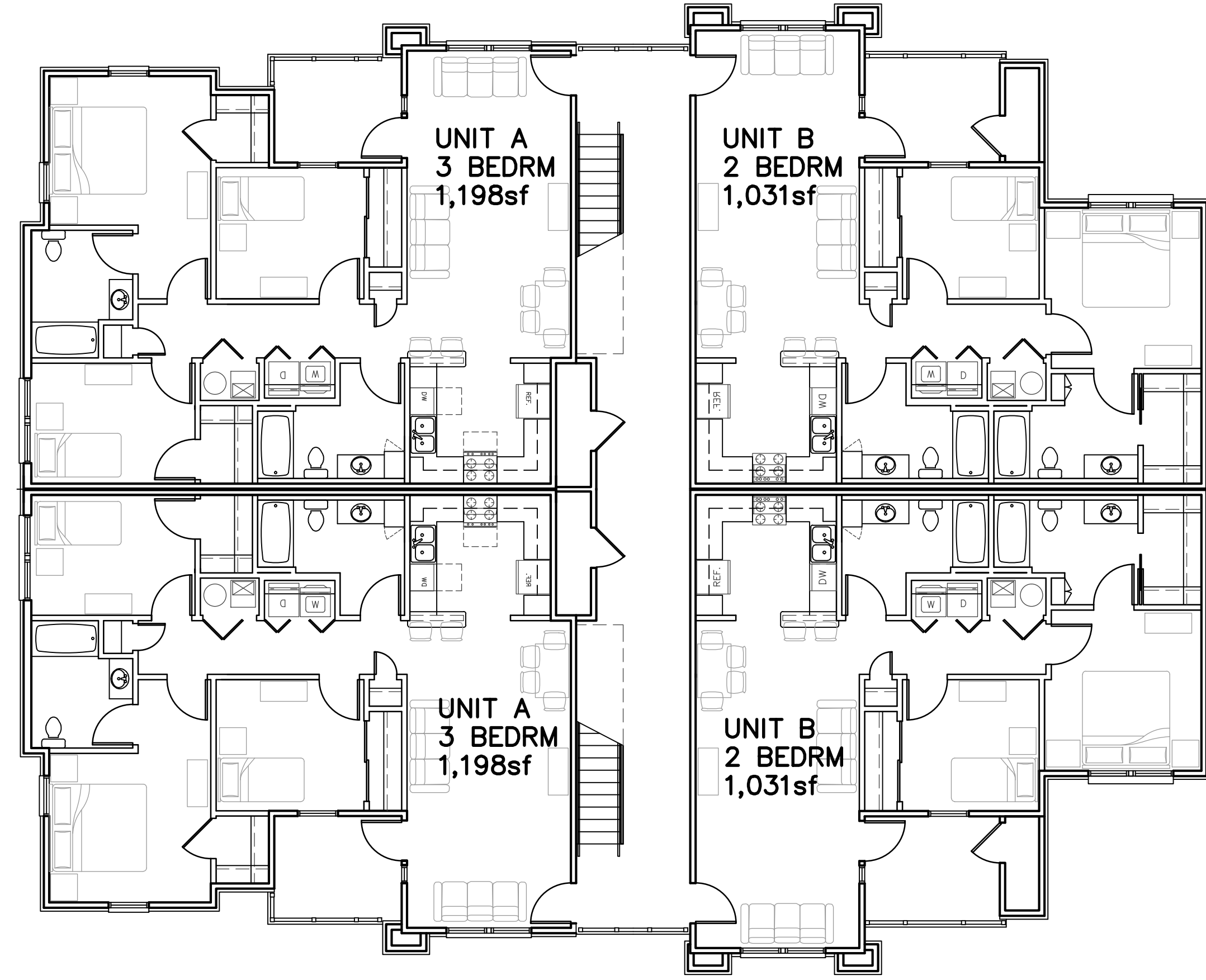
PRELIMINARY
DRAWING
NOT FOR
CONSTRUCTION

DATE: 12-15-2015
JOB: 15-2734
SHEET:



**BUILDING TYPE 3
FIRST & SECOND FLOOR PLANS**

1/8"=1'-0"



**BUILDING TYPE 4
FIRST & SECOND FLOOR PLANS**

1/8"=1'-0"

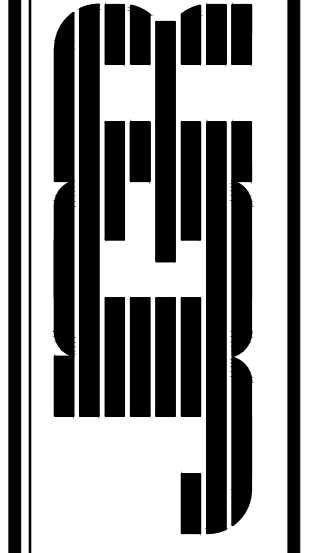
PRELIMINARY
DRAWING
NOT FOR
CONSTRUCTION

DATE: 12-15-2015
JOB: 15-2734
SHEET:

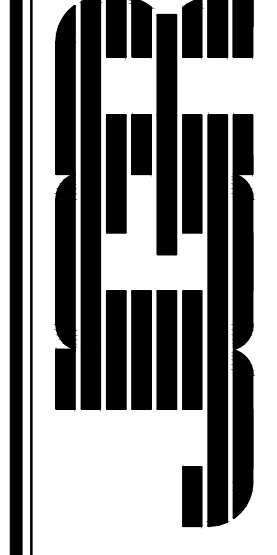
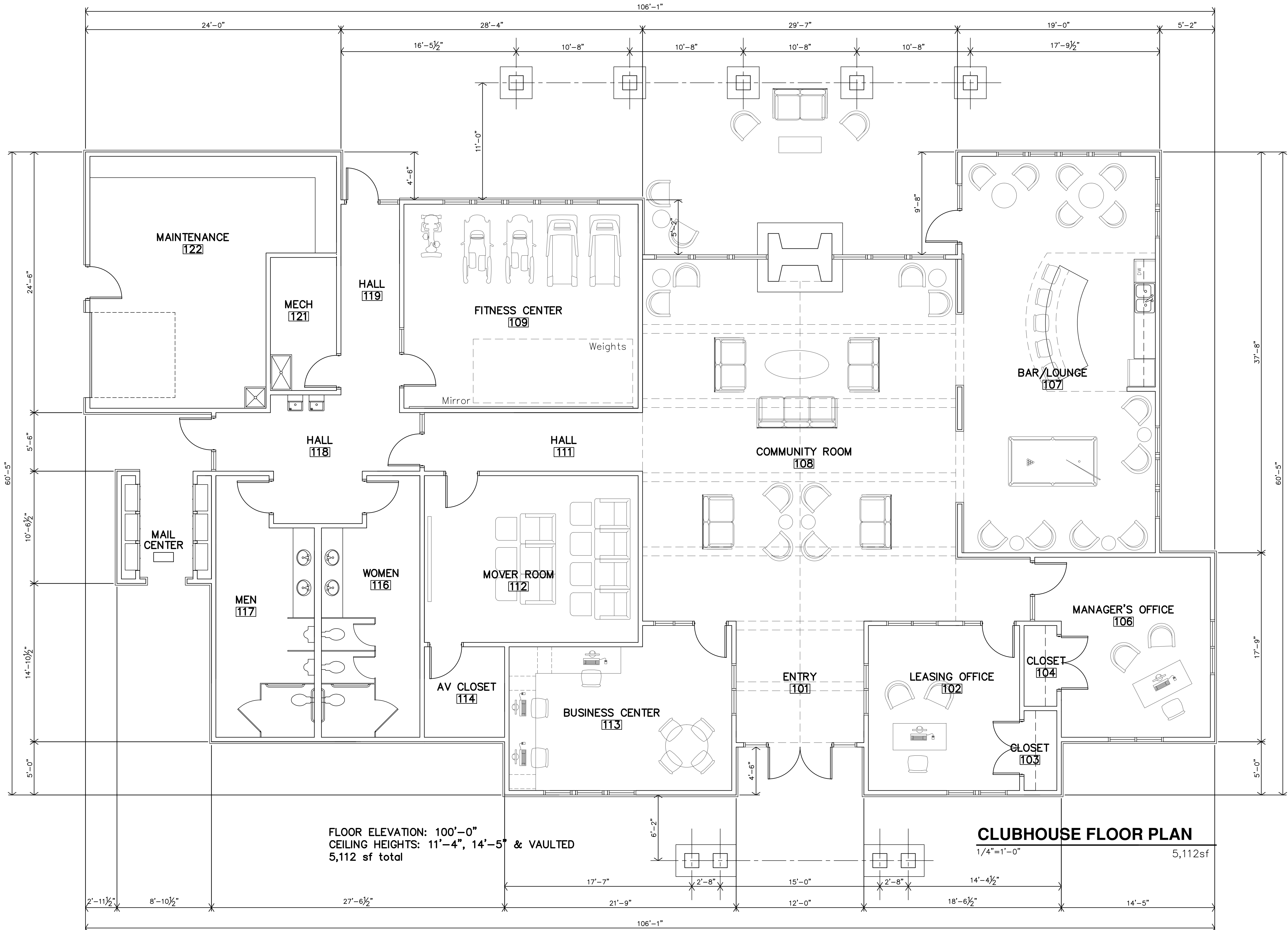
COPYRIGHTED ©

A2.3

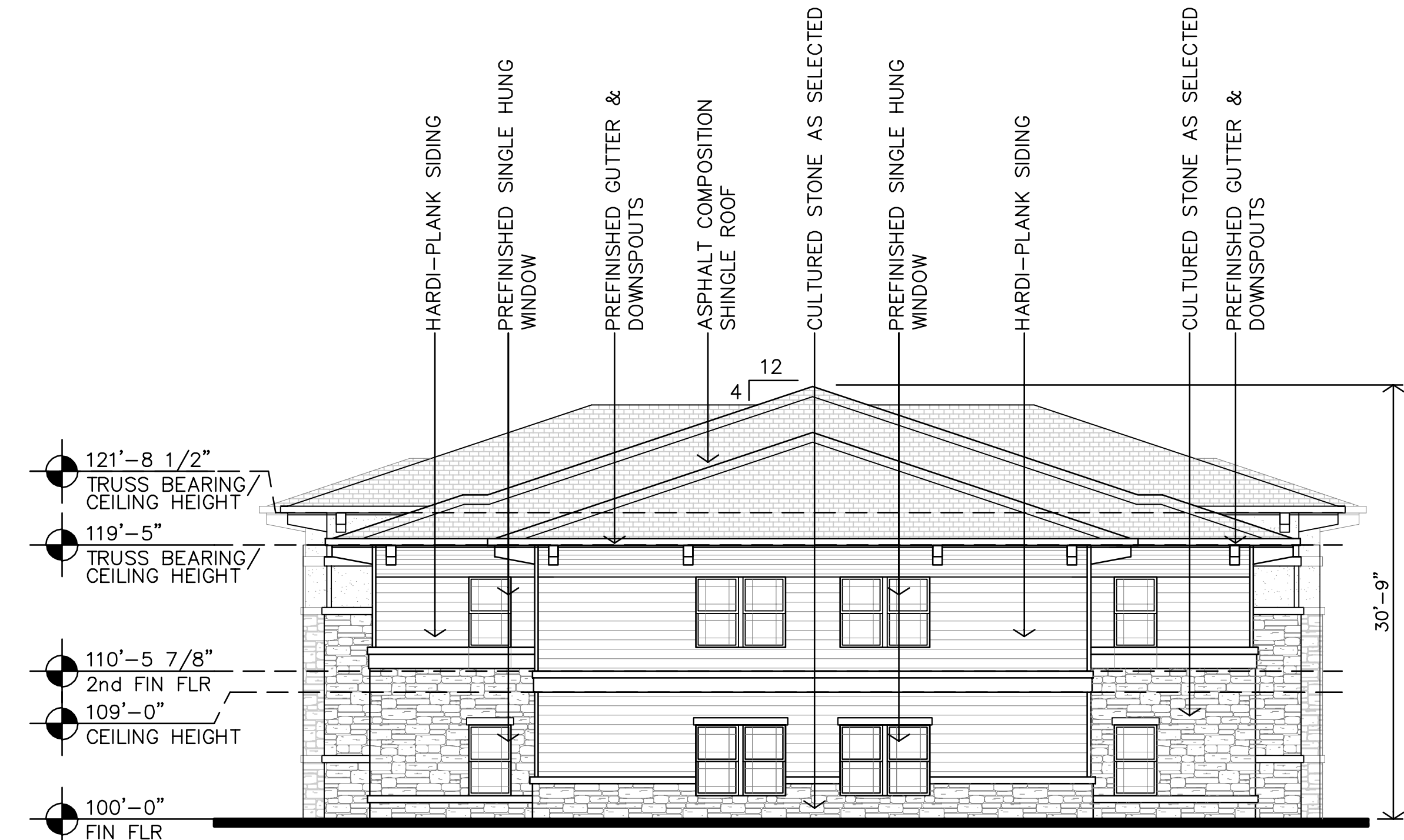
RESERVES at PRESTON TRAILS
NEW APARTMENT COMPLEX
WOLFFORTH, TEXAS



JONES GILLAM RENZ
Architects Planners Designers
730 N. Ninth, P.O. Box 2928, Sulphur, LA 70782
(713) 827.0386 - (713) 827.0392 Fax
jgr@jgarchitects.com

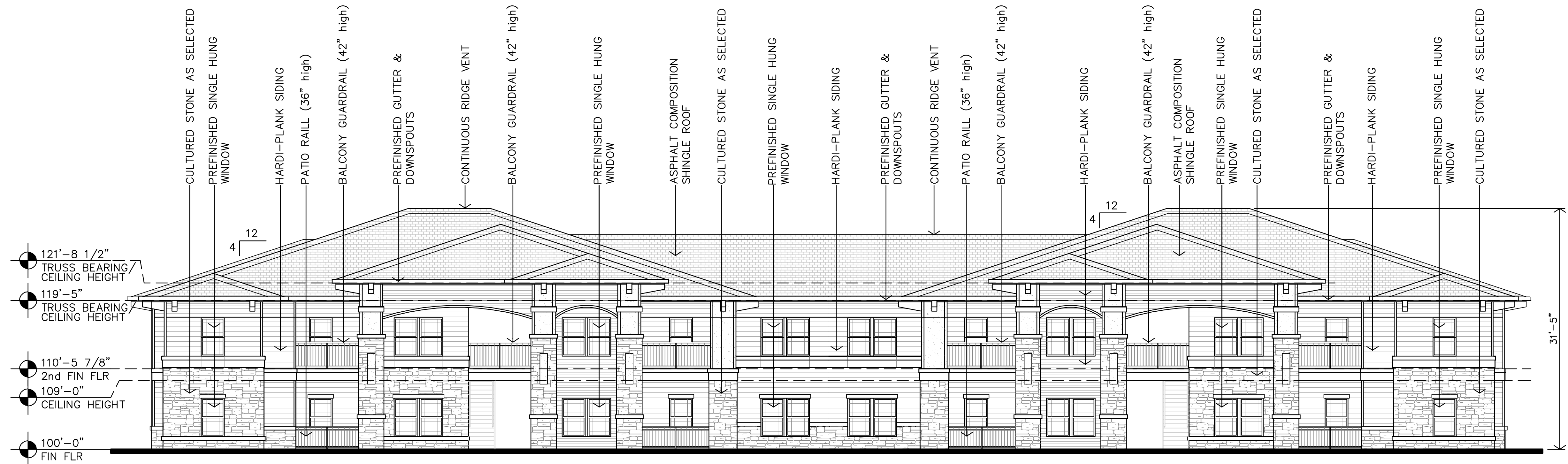


EXTERIOR MATERIALS		
DESCRIPTION	CULTURED STONE	HARDI BOARD SIDING & TRIM
CLUBHOUSE	40%	60%
APARTMENTS	30%	70%



BUILDING TYPE 1 - SIDE ELEVATIONS

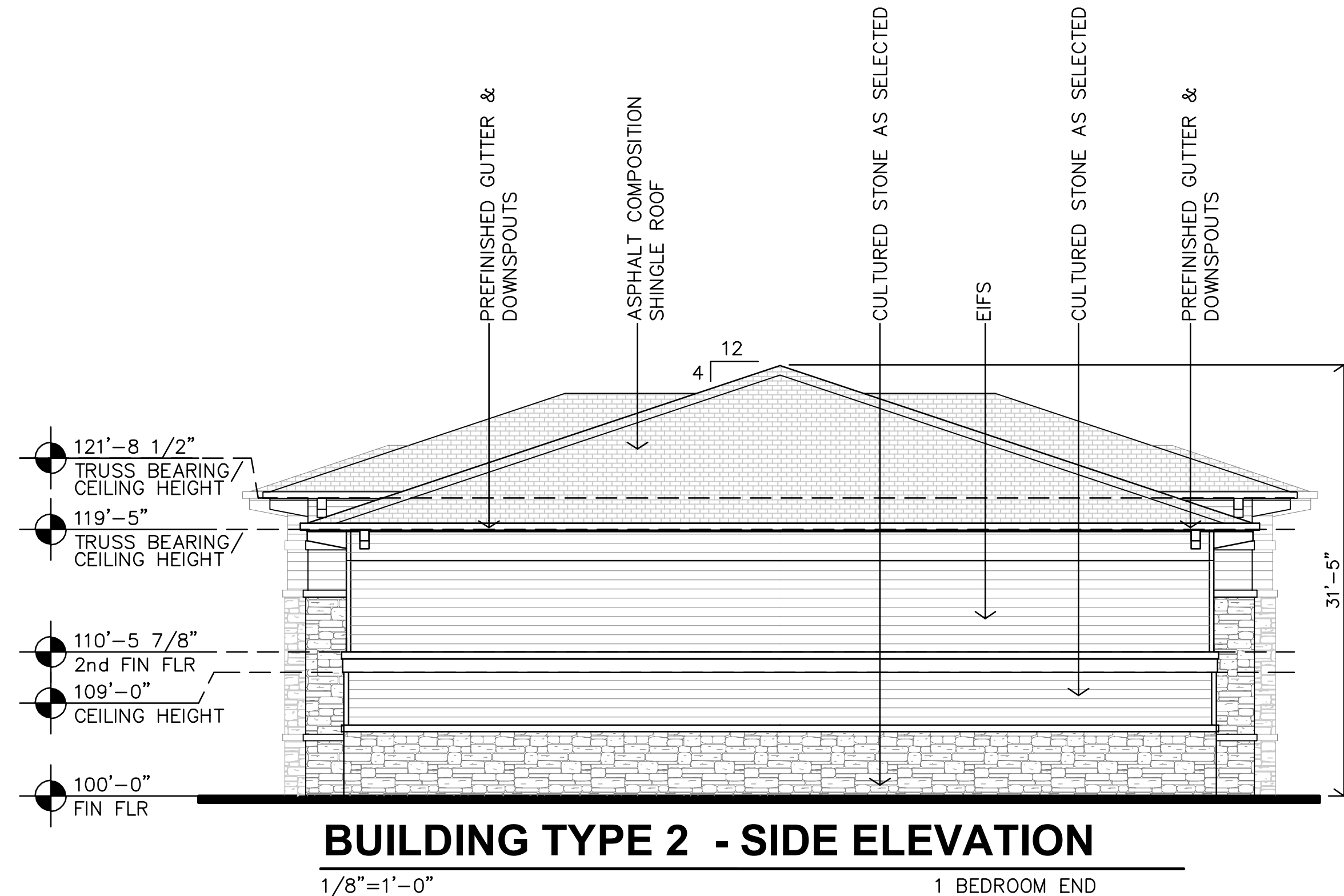
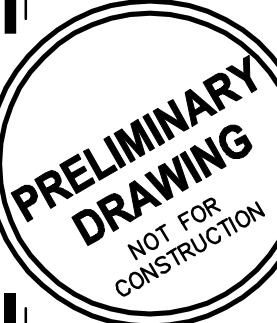
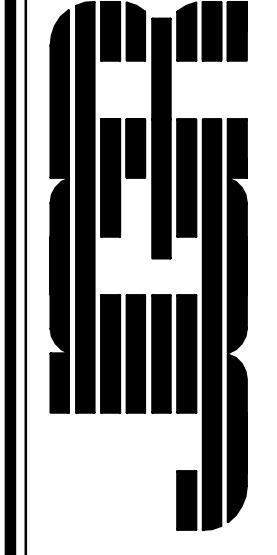
1/8"=1'-0" TYPICAL EACH SIDE



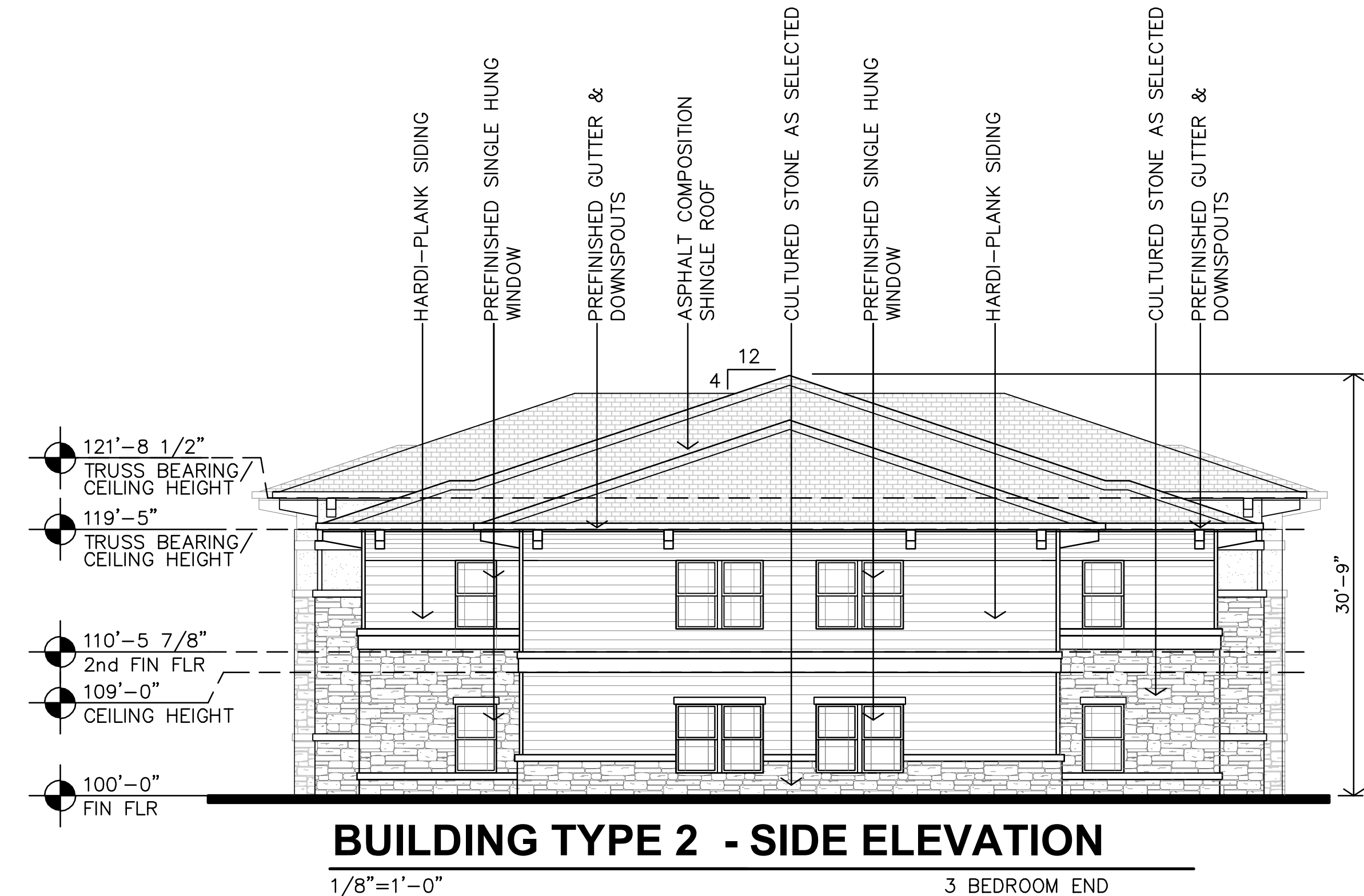
BUILDING TYPE 1 - FRONT & REAR ELEVATIONS

1/8"=1'-0"



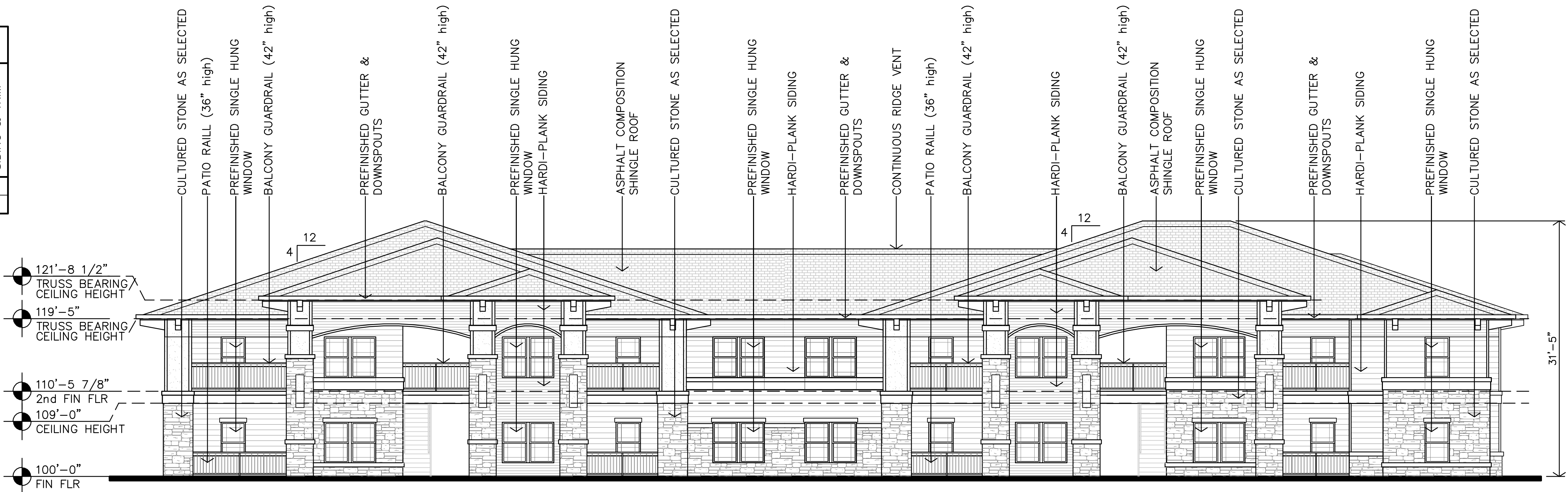


BUILDING TYPE 2 - SIDE ELEVATION
 1/8"=1'-0" 1 BEDROOM END



BUILDING TYPE 2 - SIDE ELEVATION
 1/8"=1'-0" 3 BEDROOM END

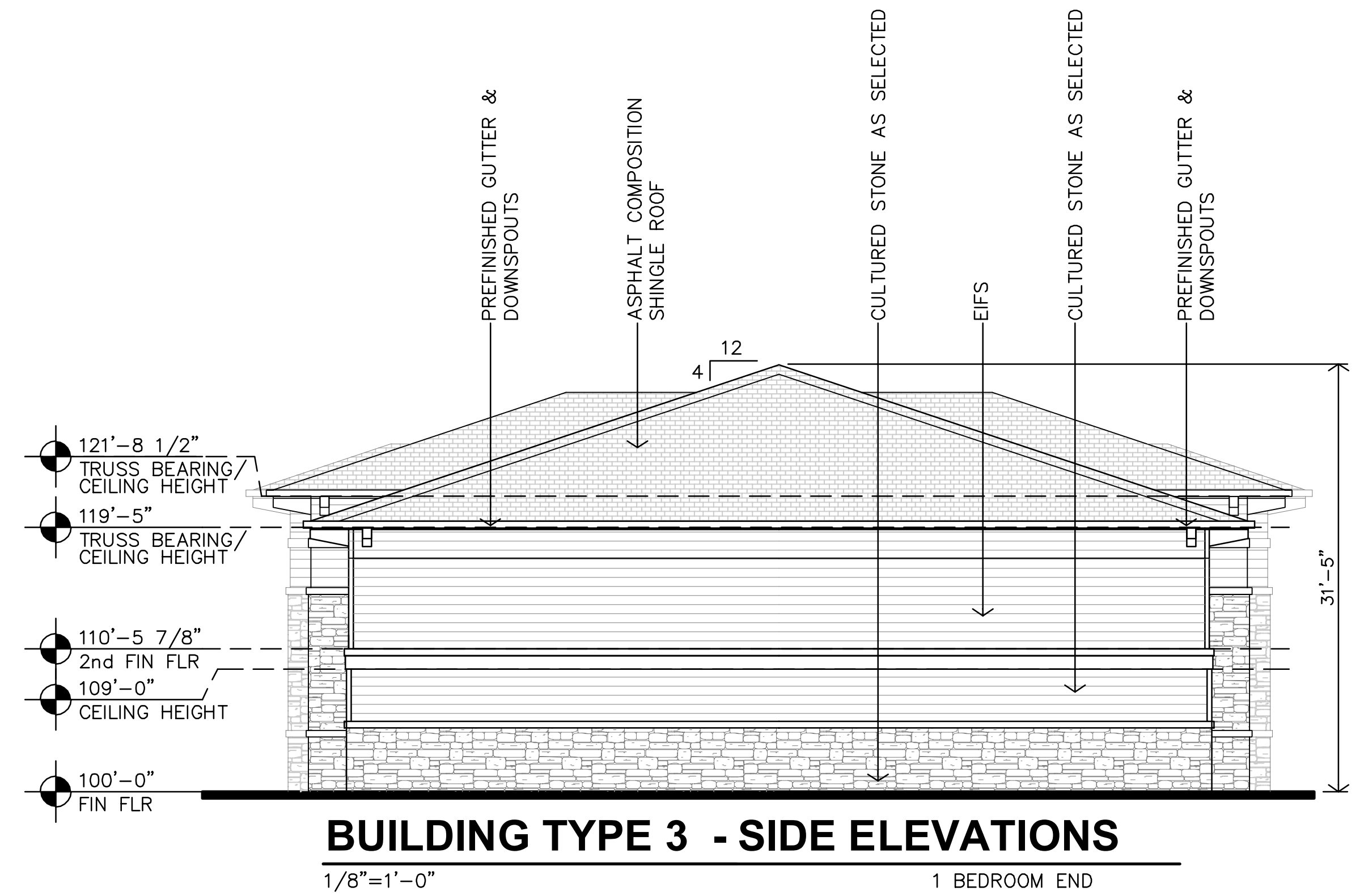
EXTERIOR MATERIALS		
DESCRIPTION	CULTURED STONE	HARDI BOARD SIDING & TRIM
CLUBHOUSE	40%	60%
APARTMENTS	30%	70%



BUILDING TYPE 2 - FRONT & REAR ELEVATIONS
 1/8"=1'-0"

EXTERIOR MATERIALS

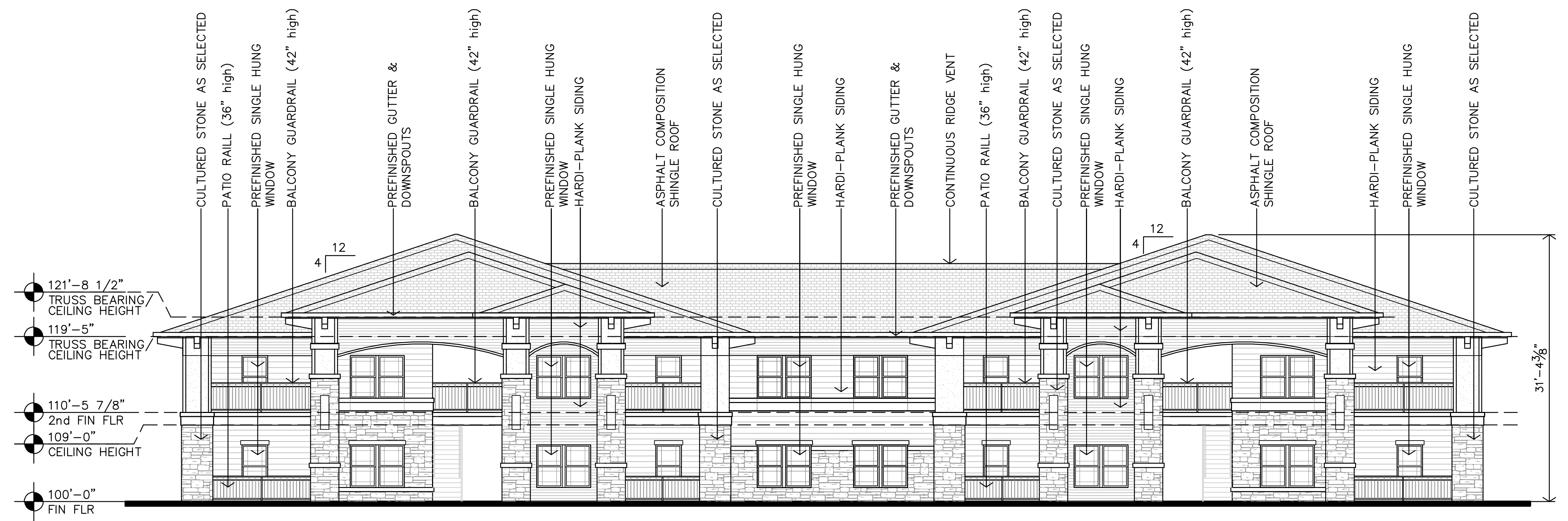
DESCRIPTION	CULTURED STONE	HARDI BOARD SIDING & TRIM
CLUBHOUSE	40%	60%
APARTMENTS	30%	70%



BUILDING TYPE 3 - SIDE ELEVATIONS

1/8"=1'-0"

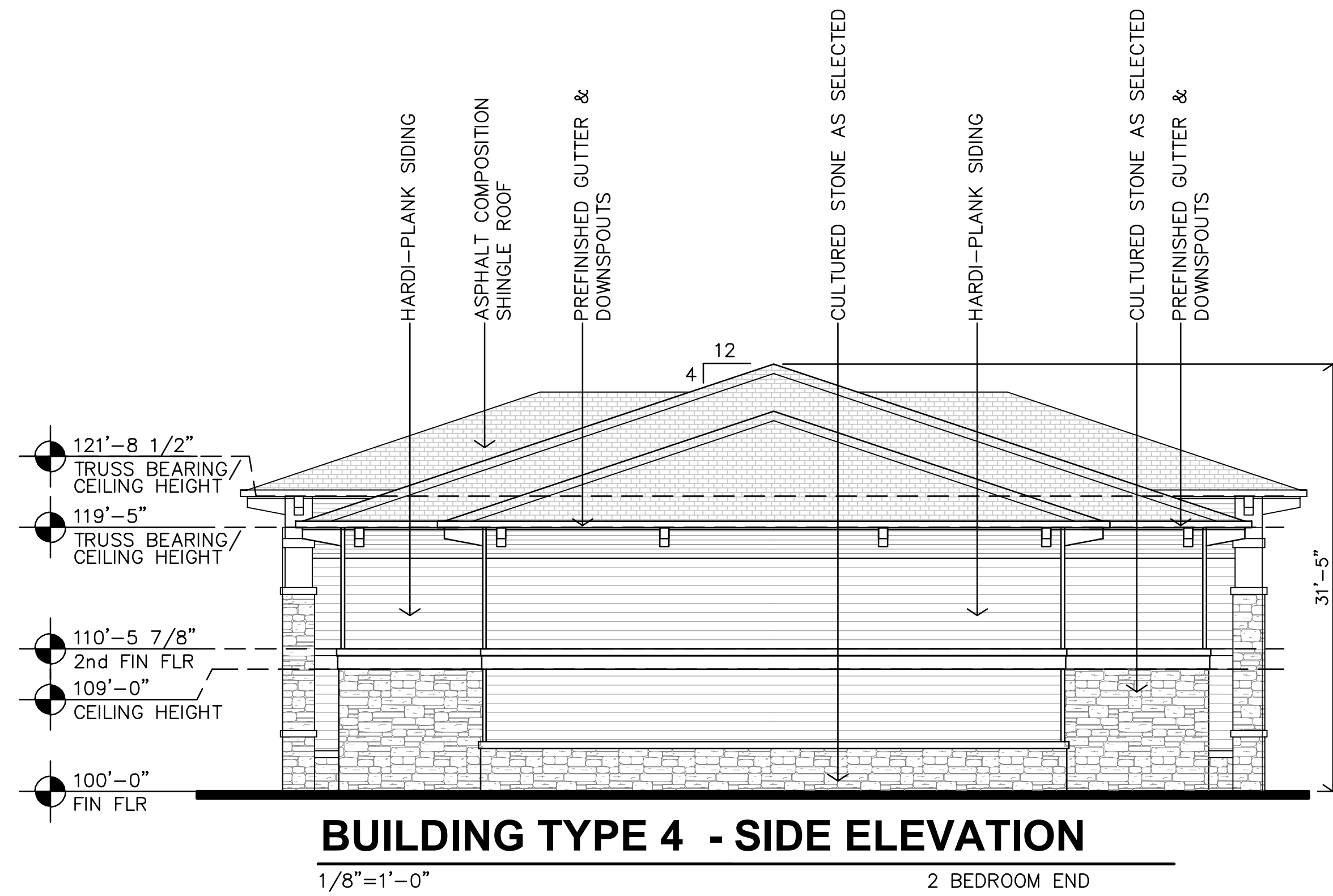
1 BEDROOM END



BUILDING TYPE 3 - FRONT & REAR ELEVATIONS

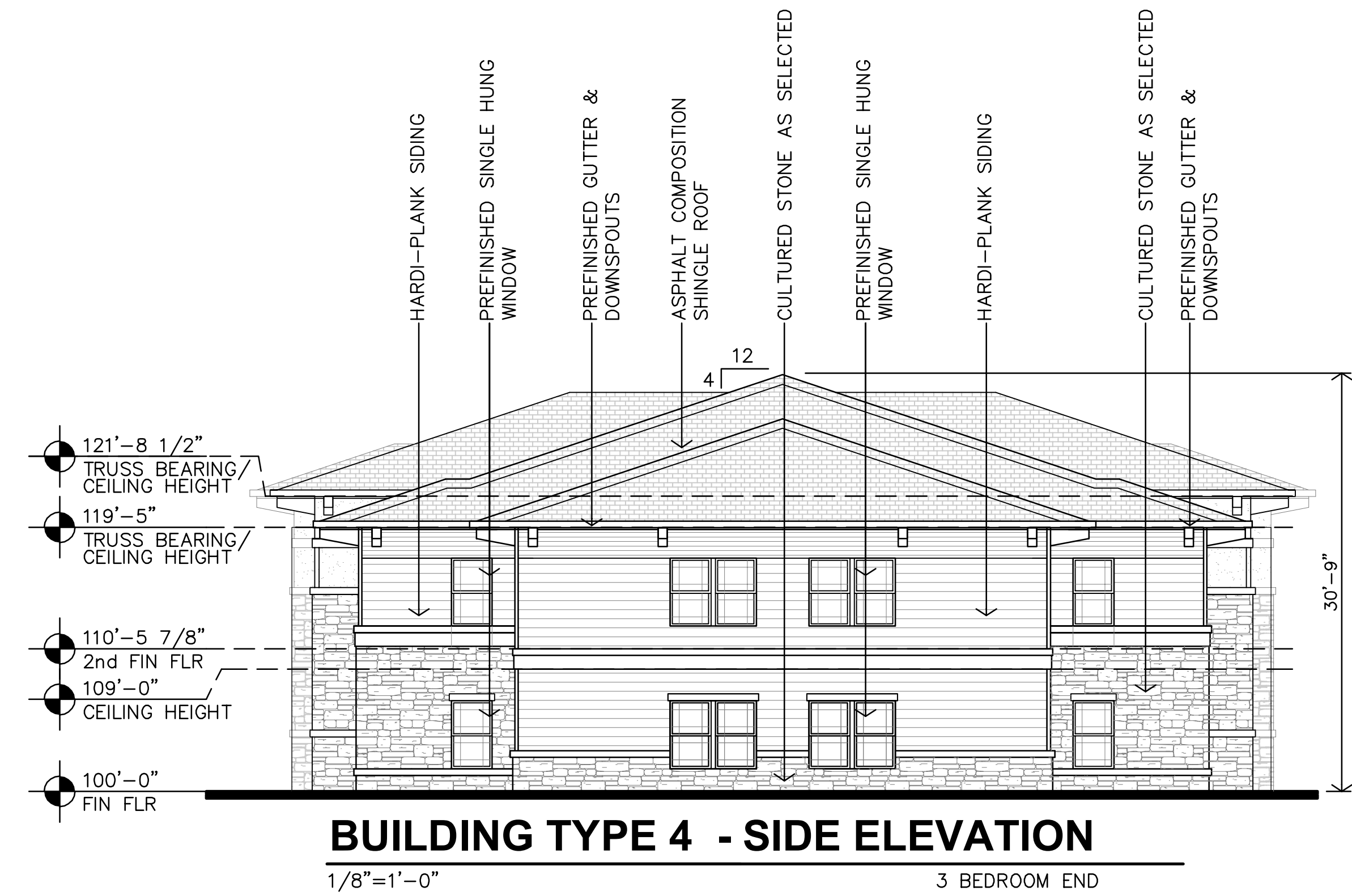
1/8"=1'-0"





BUILDING TYPE 4 - SIDE ELEVATION

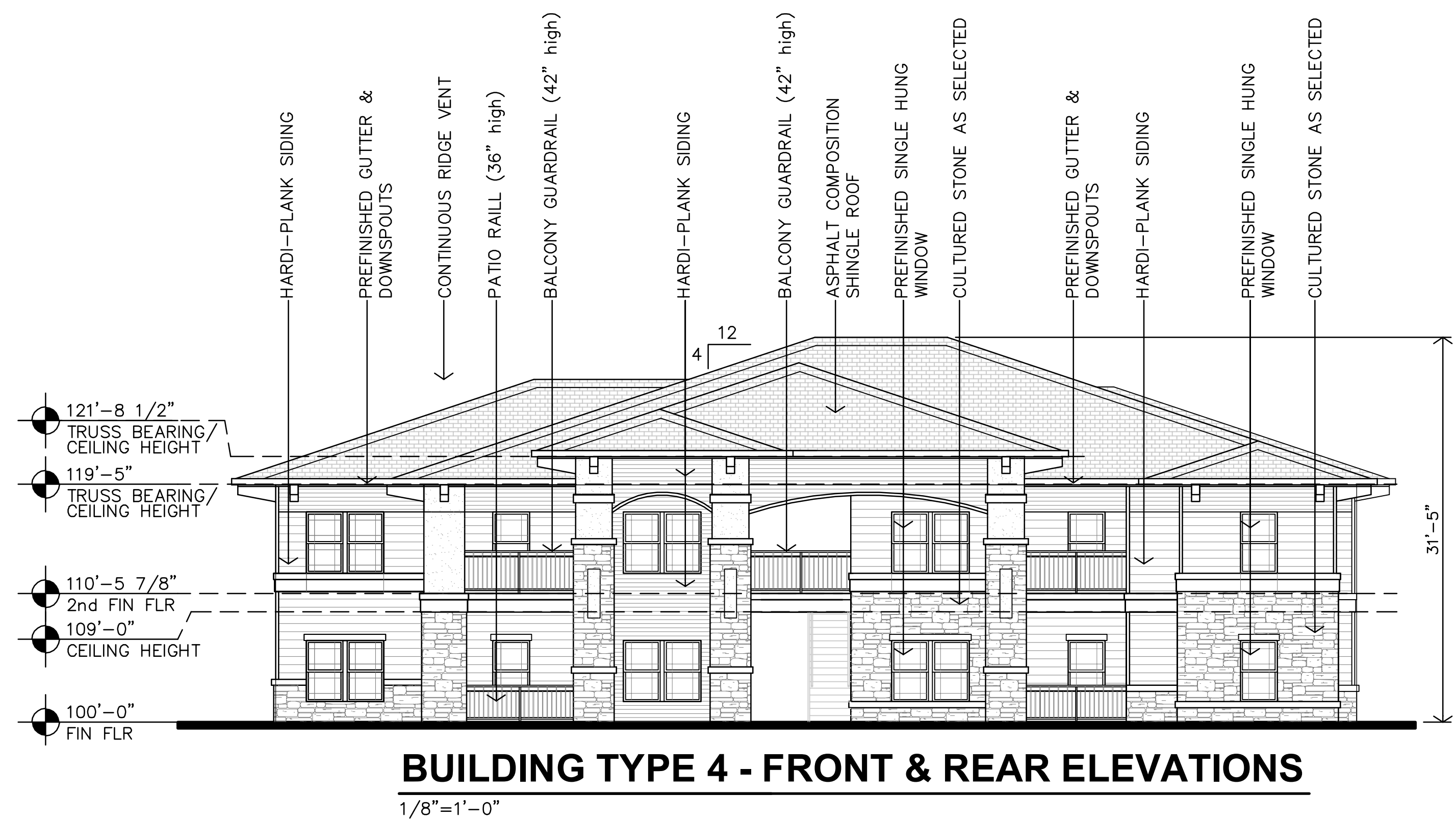
1/8"=1'-0" 2 BEDROOM END



BUILDING TYPE 4 - SIDE ELEVATION

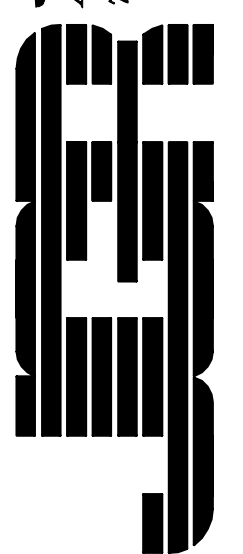
1/8"=1'-0" 3 BEDROOM END

EXTERIOR MATERIALS		
DESCRIPTION	CULTURED STONE	HARDI BOARD SIDING & TRIM
CLUBHOUSE	40%	60%
APARTMENTS	30%	70%



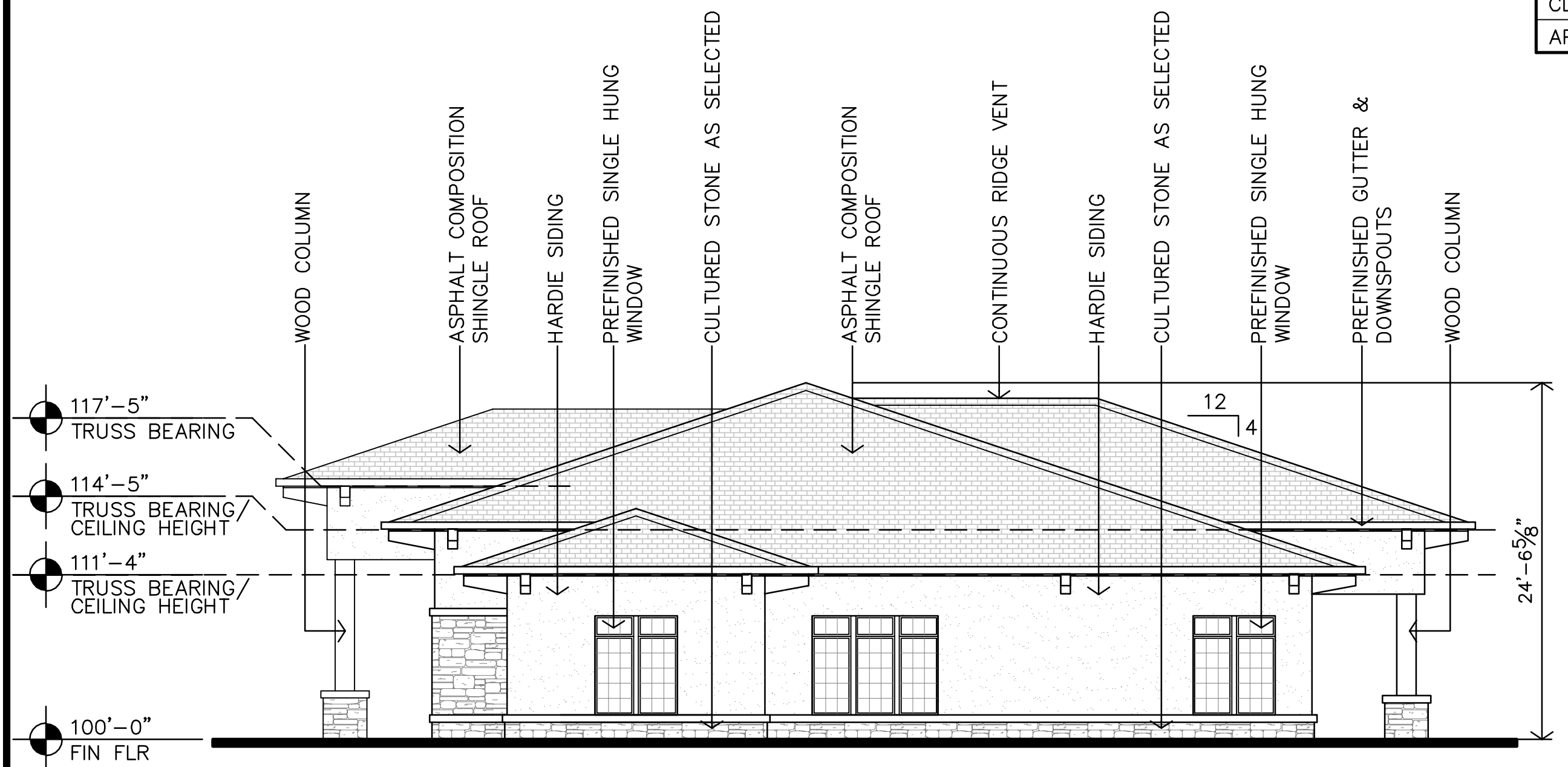
BUILDING TYPE 4 - FRONT & REAR ELEVATIONS

1/8"=1'-0"



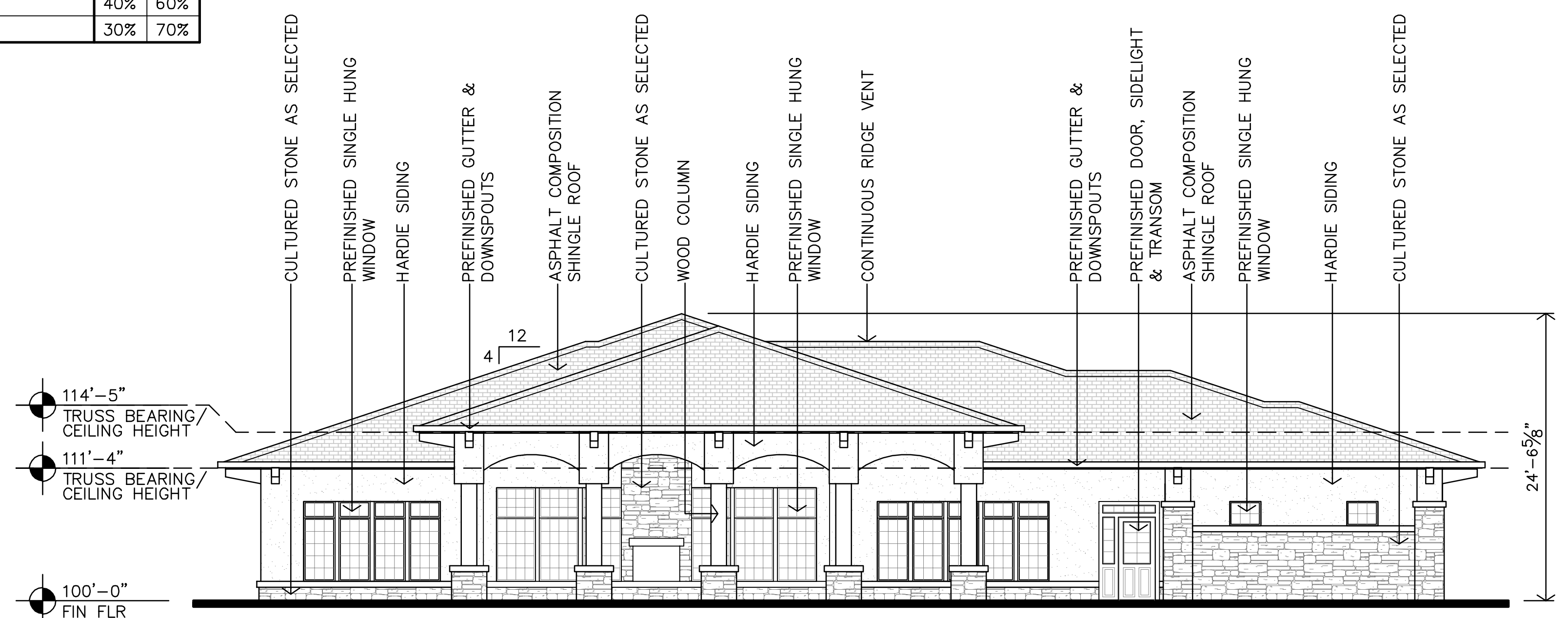
DATE: 12-15-2015
JOB: 15-2734
SHEET:

EXTERIOR MATERIALS		
DESCRIPTION	CULTURED STONE	HARDI BOARD SIDING & TRIM
CLUBHOUSE	40%	60%
APARTMENTS	30%	70%



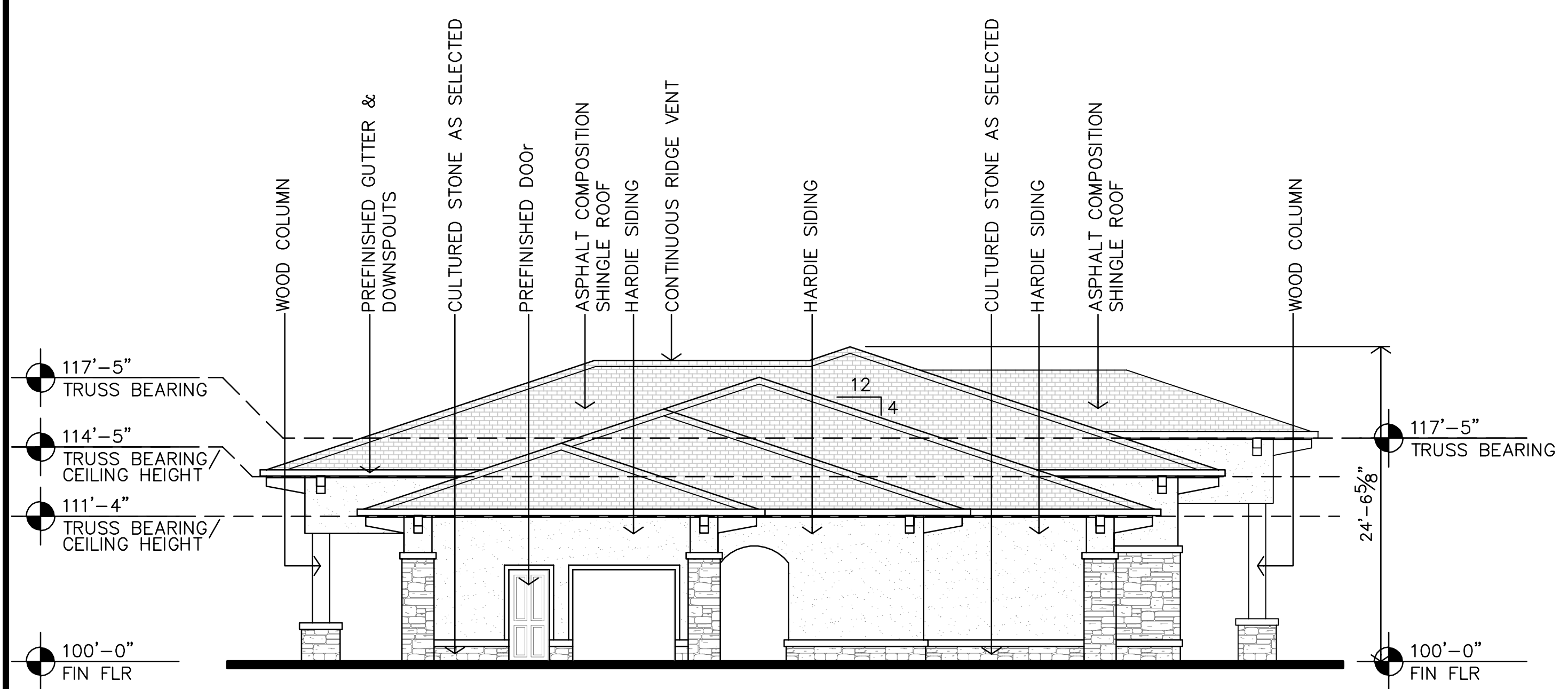
CLUBHOUSE SIDE ELEVATION

1/8" = 1'-0"



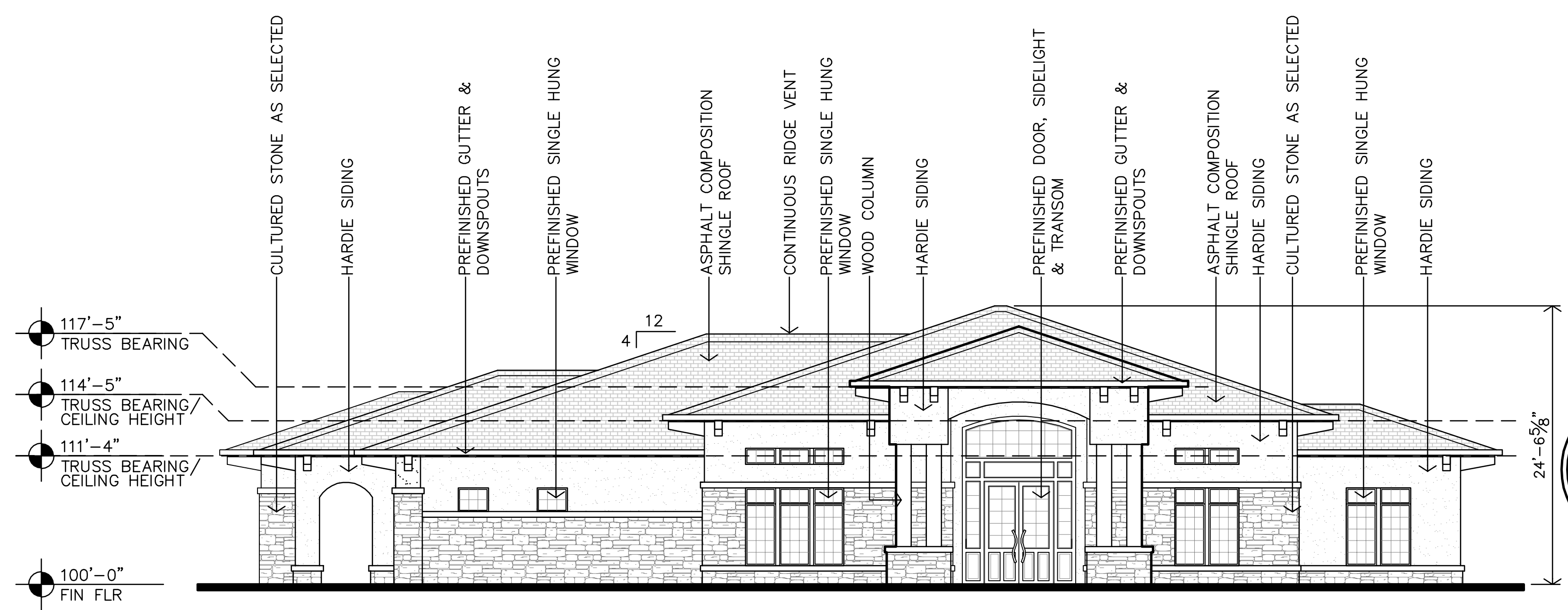
CLUBHOUSE REAR ELEVATION

1/8" = 1'-0"



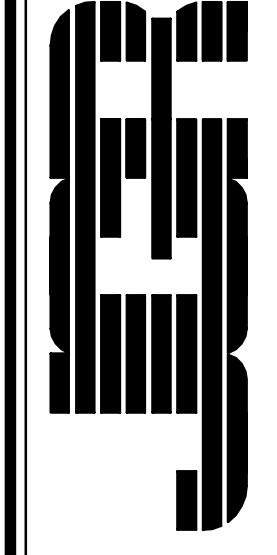
CLUBHOUSE SIDE ELEVATION

1/8" = 1'-0"



CLUBHOUSE FRONT ELEVATION

1/8" = 1'-0"



Rent Schedule (Continued)

		% of LI	% of Total	
HOUSING TAX CREDITS	TC30%	10%	9%	10
	TC40%			0
	TC50%	21%	18%	20
	TC60%	69%	59%	66
	HTC LI Total			96
	EO			0
	MR			16
	MR Total			16
	Total Units			112
	MORTGAGE REVENUE BOND	MRB30%		
MRB40%				0
MRB50%				0
MRB60%				0
MRB LI Total				0
MRBMR				0
MRBMR Total				0
MRB Total				0

BEDROOMS	0			0
	1			12
	2			56
	3			44
	4			0
	5			0

		% of LI	% of Total	
HOUSING TRUST FUND	HTF30%			0
	HTF40%			0
	HTF50%			0
	HTF60%			0
	HTF80%			0
	HTF LI Total			0
	MR			0
	MR Total			0
	HTF Total			0
	HOME	30%	27%	27%
LH/50%		36%	36%	4
HH/60%		36%	36%	4
HH/80%				0
HOME LI Total				11
EO				0
MR				0
MR Total				0
HOME Total			11	
OTHER	Total OT Units			0

ACQUISITION + HARD			
Cost Per Sq Ft	\$ 114.22		
HARD			
Cost Per Sq Ft	\$ 114.22		
BUILDING			
Cost Per Sq Ft	\$ 84.16		
Total Points claimed:			12

Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

ANNUAL OPERATING EXPENSES

General & Administrative Expenses			
Accounting	\$	6,447	
Advertising	\$	10,060	
Legal fees	\$	11,203	
Leased equipment	\$	0	
Postage & office supplies	\$	5,321	
Telephone	\$	5,609	
Other	\$		
Other	\$		
Total General & Administrative Expenses:			\$ 38,640
Management Fee:	Percent of Effective Gross Income:	5.00%	\$ 41,294
Payroll, Payroll Tax & Employee Benefits			
Management	\$	60,480	
Maintenance	\$	51,520	
Other	\$		
Other	\$		
Total Payroll, Payroll Tax & Employee Benefits:			\$ 112,000
Repairs & Maintenance			
Elevator	\$		
Exterminating	\$	5,241	
Grounds	\$	11,788	
Make-ready	\$	13,100	
Repairs	\$	34,444	
Pool	\$	0	
Other	\$	<i>Decorating</i> 2,626	
Other	\$		
Total Repairs & Maintenance:			\$ 67,200
Utilities (Enter Only Property Paid Expense)			
Electric	\$	20,160	
Natural gas	\$		
Trash	\$	15,000	
Water/Sewer	\$	63,400	
Other	\$		
Other	\$		
Total Utilities:			\$ 98,560
Annual Property Insurance:	Rate per net rentable square foot:	\$ 0.25	\$ 29,990
Property Taxes:			
Published Capitalization Rate:	10.50%	Source:	Lubbock
Annual Property Taxes	\$	91,200	
Payments in Lieu of Taxes	\$		
Total Property Taxes:			\$ 91,200
Reserve for Replacements:	Annual reserves per unit:	\$ 250	\$ 28,000
Other Expenses			
Cable TV	\$		
Supportive Services (Staffing/Contracted Services)	\$		
TDHCA Compliance fees	\$	4,214	
TDHCA Bond Administration Fees (TDHCA as Bond Issuer Only)	\$		
Security	\$		
Other	\$		
Other	\$		
Total Other Expenses:			\$ 4,214
TOTAL ANNUAL EXPENSES	Expense per unit:	\$ 4563	\$ 511,098
	Expense to Income Ratio:	61.88%	
NET OPERATING INCOME (before debt service)			\$ 314,786
Annual Debt Service			
<i>BBVA Compass</i>	\$	211,662	
<i>TDHCA HOME</i>	\$	35,415	
<i>City of Wolfforth EDC</i>	\$	0	
	\$		
TOTAL ANNUAL DEBT SERVICE	Debt Coverage Ratio:	1.27	\$ 247,077
NET CASH FLOW			\$ 67,709

15 Year Rental Housing Operating Pro Forma

All Programs Must Complete the following:

The pro forma should be based on the operating income and expense information for the base year (first year of stabilized occupancy using today's best estimates of market rents, restricted rents, rental income and expenses), and principal and interest debt service. The Department uses an annual growth rate of 2% for income and 3% for expenses. Written explanation for any deviations from these growth rates or for assumptions other than straight-line growth made during the proforma period should be attached to this exhibit.

INCOME	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 10	YEAR 15
POTENTIAL GROSS ANNUAL RENTAL INCOME	\$888,816	\$906,592	\$924,724	\$943,219	\$962,083	\$1,062,217	\$1,172,774
Secondary Income	\$ 4,032	\$ 4,113	\$ 4,195	\$ 4,279	\$ 4,364	\$ 4,819	\$ 5,320
POTENTIAL GROSS ANNUAL INCOME	\$892,848	\$910,705	\$928,919	\$947,497	\$966,447	\$1,067,036	\$1,178,094
Provision for Vacancy & Collection Loss	(\$66,964)	(\$68,303)	(\$69,669)	(\$71,062)	(\$72,484)	(\$80,028)	(\$88,357)
Rental Concessions	\$0						
EFFECTIVE GROSS ANNUAL INCOME	\$825,884	\$842,402	\$859,250	\$876,435	\$893,964	\$987,008	\$1,089,737
EXPENSES							
General & Administrative Expenses	\$38,640	\$39,799	\$40,993	\$42,223	\$43,490	\$50,416	\$58,446
Management Fee	\$ 41,294	\$ 42,533	\$ 43,809	\$ 45,123	\$ 46,477	\$ 53,880	\$ 62,461
Payroll, Payroll Tax & Employee Benefits	\$ 112,000	\$ 115,360	\$ 118,821	\$ 122,385	\$ 126,057	\$ 146,135	\$ 169,410
Repairs & Maintenance	\$ 67,200	\$ 69,216	\$ 71,292	\$ 73,431	\$ 75,634	\$ 87,681	\$ 101,646
Electric & Gas Utilities	\$ 20,160	\$ 20,765	\$ 21,388	\$ 22,029	\$ 22,690	\$ 26,304	\$ 30,494
Water, Sewer & Trash Utilities	\$ 78,400	\$ 80,752	\$ 83,175	\$ 85,670	\$ 88,240	\$ 102,294	\$ 118,587
Annual Property Insurance Premiums	\$ 29,990	\$ 30,890	\$ 31,816	\$ 32,771	\$ 33,754	\$ 39,130	\$ 45,363
Property Tax	\$ 91,200	\$ 93,936	\$ 96,754	\$ 99,657	\$ 102,646	\$ 118,995	\$ 137,948
Reserve for Replacements	\$ 28,000	\$ 28,840	\$ 29,705	\$ 30,596	\$ 31,514	\$ 36,534	\$ 42,353
Other Expenses	\$ 4,214	\$ 4,340	\$ 4,471	\$ 4,605	\$ 4,743	\$ 5,498	\$ 6,374
TOTAL ANNUAL EXPENSES	\$511,098	\$526,431	\$542,224	\$558,491	\$575,245	\$666,867	\$773,082
NET OPERATING INCOME	\$314,786	\$315,971	\$317,026	\$317,944	\$318,718	\$320,141	\$316,655
DEBT SERVICE							
First Deed of Trust Annual Loan Payment	\$211,662	\$211,662	\$211,662	\$211,662	\$211,662	\$211,662	\$211,662
Second Deed of Trust Annual Loan Payment	35,415	35,415	35,415	35,415	35,415	35,415	35,415
Third Deed of Trust Annual Loan Payment							
Other Annual Required Payment							
Other Annual Required Payment							
NET CASH FLOW	\$67,709	\$68,894	\$69,949	\$70,867	\$71,641	\$73,064	\$69,578
Debt Coverage Ratio	1.27	1.28	1.28	1.29	1.29	1.30	1.28
Other (Describe)							
Other (Describe)							

By signing below I (we) are certifying that the above 15 Year pro forma, rent schedule and operating expense schedule have been reviewed and generally meet current lender underwriting parameters for the loan terms indicated in the term sheet. (Signature only required if using this pro forma for points under §11.9(e)(1) relating to Financial Feasibility)

Phone: _____

Email: _____

Signature, Authorized Representative, Construction or Permanent Lender

Printed Name

Date

Financing Narrative and Summary of Sources and Uses

Describe all sources of funds. Information must be consistent with the information provided throughout the Application (i.e. Financing Narrative, Term Sheets and Development Cost Schedule).

Financing Participants	Funding Description	Construction Period		Lien Position	Permanent Period					Lien Position
		Loan/Equity Amount	Interest Rate (%)		Loan/Equity Amount	Interest Rate (%)	Amort - ization	Term (Yrs)	Syndication Rate	
Debt										
TDHCA	HOME	\$700,000	3%	2nd	\$ 700,000	3%	30	15		2nd
TDHCA	TCAP Loan Repayments	\$0	0%		\$ -	0%	0	0		
TDHCA	Mortgage Revenue Bond	\$0	0%		\$ -	0%	0	0		
BBVA Compass	Conventional Loan	\$14,424,000	3.25%	1st	\$ 3,325,000	5.40%	35	18		1st
City of Wolfforth EDC	Local Government Loan	\$53,760	3.00%	3rd	\$ 53,760	3.00%	30	5		3rd
Third Party Equity										
Red Stone	HTC	\$ 1,391,000			\$ 14,708,354				1.0575	
Grant										
McPherson Construction	Matching Funds				\$ 27,250					
Deferred Developer Fee										
Overland Property Group					\$ 79,153					
Other										
	Total Sources of Funds	\$ 17,384,013			\$ 18,893,517					
	Total Uses of Funds				\$ 18,893,517					

Briefly describe the complete financing plan for the Development, including a discussion of the sources of funds. The information must be consistent with all other documentation in this section. Provide sufficient detail so that the reader can understand all terms related to each source that are not readily apparent above or in the term sheets.

The Construction and Permanent financing will be provided by BBVA Compass Bank and Equity will be provided by Red Stone. The City of Wolfforth EDC will provide a local government loan, which is to be paid from cash flow with no must-pay debt service per TDHCA REA Underwriting Condition due at Commitment Notice. The contractor will provide HOME matching funds. There is deferred developer fee that can be repaid in 15 years.

February 8, 2016

Ms. Audrey Watson
Director of Finance
Overland Property Group, LLC

Re: The Reserves at Preston Trails, Wolfforth, Texas

Dear Audrey,

BBVA Compass Bank (the "Bank") is pleased to provide you with this Proposal of Terms for the Construction and Permanent financing of The Reserves at Preston Trails mixed income housing community. The following terms were based upon a preliminary review of the financial information and projections provided to us. Please note that this Proposal of Terms should not be construed as a Commitment to Lend, since all Terms and Conditions are subject to final approval by the Bank's Loan Committee:

Construction Loan:

Borrower: OPG Preston Trails Partners, LLC

Collateral: The Subject Loan shall be secured by a first mortgage lien on borrower's fee interest in the project and an assignment of rents and leases on the 112-unit project to be located on the west side of Alcove Avenue between 66th Street and Donald Preston Drive in Wolfforth, Texas. Additionally, the Loan shall be secured by an Assignment of the Managing Member's Interest and the Deferred Developer's Fee.

Amount: \$14,424,000. The Loan amount shall be limited to 80% of the LIHTC Investment Value, which is the combined value of the Tax Credits plus the stabilized value of the Real Estate based upon an Appraisal acceptable to the Bank.

Loan Advances: Disbursement of loan proceeds will be made monthly upon receipt of written approval from the third party construction consultant satisfactory to the Bank.

Interest Rate: 1 month Libor + 2.75%. Interest-only payments shall be due monthly; Principal due at Maturity

Fees: .50% Origination Fee. Additionally, the Borrower shall be responsible for the reimbursement of all other costs related to the extension of this loan including, but not limited to: appraisal fees, the Bank's legal fees, environmental and other third party review fees.

- Maturity:** Thirty (30) Months from Closing
- Recourse:** Brett Johnson, Rex Vanier, Patrick Beatty (joint and severally) and Overland Property Group, LLC (OPG) will provide a payment and completion guaranty in form and substance acceptable to the Bank. These guaranties will remain until conversion to the Permanent Loan.
- Developer Fee:** Payment of 9% of total developer fee (\$174,825 based upon total developer fee of \$1,942,498) at closing to the HUB with 25% of the remaining cash fee at closing paid to OPG with an additional 25% paid to OPG at lien-free completion. These payments are subject to reduction if, in the Bank's judgment, the remaining cash developer held back until permanent loan conversion is less than 10% of the permanent loan amount. The remainder is payable to OPG upon construction loan repayment and conversion to permanent loan.

Conditions to Closing:

- Borrower, Managing Member, and Guarantor certify that there are no defaults, no material litigation and no material adverse change in the financial or project information provided to Bank in connection with the Loan request
- Receipt, review and approval of appraisal, environmental assessment, construction consultant and other third party reports
- All documentation satisfactory to Bank and its legal counsel
- Evidence of a commitment by a tax credit investor acceptable to Bank for the acquisition of 9% low income housing tax credits for a price not less than \$1.0575 and on terms, including pay-in schedule amounts and timing, acceptable to Bank. Hudson Capital with Compass as the upper tier investor or Red Stone with JPMorgan Chase as the upper tier investor would be acceptable to Bank.
- An equity pay-in of 15% at closing, 65% at completion, 15% at stabilization and 5% at the receipt of 8609s would be acceptable.
- All subsidy funds must be committed and closed simultaneously with the closing of the Loan.
- Final project budget to be approved by Bank, including a 5% hard cost contingency.
- P&P bond from general contractor, or a letter of credit from an institution acceptable to Bank in the amount of 10% of the construction contract, unless waived by Bank following the financial review of the general contractor
- Receipt of all required municipal and other governmental approvals.
- Approval of current financial statements of the Guarantor.
- Borrower counsel opinion in form and content satisfactory to Bank.

Permanent Loan:

Provided that the Construction Loan is not in default, the Borrower may elect to exercise the option to convert the Construction Loan to a Permanent Loan subject to the following conditions: 1) the Construction Loan has been Paid down to the agreed upon Permanent Loan Amount; 2) the Property has achieved a minimum occupancy of 90% for 90 days; and 3) the Property has achieved a

Pro Forma Debt Service Cover Ratio (DSCR) of 1.15. The DSCR calculation shall be based upon the higher of Actual Expenses or the Expenses set forth in the Appraisal. Expenses shall also be adjusted to include a minimum Management Fee of 5% and Replacement Reserves of \$250 per Unit per Annum.

Amount: \$3,325,000. Based upon an Appraisal acceptable to the Bank, the Loan amount shall be limited to 80% of the stabilized real estate value based upon the LIHTC use-restrictions in place.

Collateral: The Subject Loan shall be secured by a first mortgage lien on Borrower's fee interest in the project and an assignment of rents and leases on the 112-unit project to be located in Wolfforth, Texas.

Interest Rate: Fixed rate based on the 10 Year treasury + 330 bps for a 30 month forward rate lock.

Fee: .75% Conversion Fee payable at conversion to permanent loan

Maturity: Eighteen (18) Years.

Amortization: Thirty-five (35) Years.

Recourse: The loan is specifically to be non-recourse.

Prepayment: Following conversion, the loan will have standard prepayment (yield maintenance) penalties. Prior to conversion, there are no break fees.

Please note that this Proposal of Terms should not be construed as a Commitment to Lend, since all Terms and Conditions are subject to final approval by the Bank's Loan Committee. Compass Bank wishes to thank you for the opportunity to provide financing for this project. If you have any questions, please feel free to contact me at 713-966-2303.

Sincerely,



Ken L. Overshiner
Senior Vice President, Community Development Capital

REDSTONE™

EQUITY PARTNERS

December 21, 2015

Ms. Audrey Watson
Mr. Brett Johnson
Overland Property Group
5345 W. 151st Terrace
Leawood, KS 66224

Re: The Reserves at Preston Trails
Wolfforth, TX

Dear Audrey and Brett:

Red Stone Equity Partners, LLC ("Red Stone") is pleased to be given an opportunity to submit a proposal on The Reserves at Preston Trails ("Project") in Wolfforth, Texas. This letter serves as an outline of the business terms regarding the acquisition of investor member interests in a Limited Liability Corporation (the "Company") that will own the Project. Red Stone or an assignee (the "Investor Member") will acquire a 99.99% investor member interest (the "LP Interest") and a special member interest (the "SM Interest") in the Company. The terms of this proposal are subject to ratification by the Red Stone Board of Directors and include the following:

1. **Project Information.** The Project will consist of 112 residential units for rent to low-income families. The Project will consist of seven (7) residential buildings and one (1) non-residential building located in Wolfforth, Lubbock County, Texas. Within the Project, 96 of the units will be LIHTC compliant, with 16 units being market rate.
2. **Project Ownership.** The "Managing Member" will be a to-be-formed, for-profit, single purpose taxable entity owned 51% by Overland Property Group, LLC ("OPG"), a Kansas corporation, and 49% by Austin HUB, LLC, a Texas Limited Liability Company. Any change in the ownership of the Managing Member shall be subject to Red Stone's approval. The "Developer" is OPG. The "Guarantors" are the Developer, Patrick Beatty, Brett Johnson and Rex Vanier, on a joint and several basis, and the Guarantors are subject to the review and approval of Red Stone.
3. **Purchase Price.** Red Stone will acquire its Investor Member Interest in the Company for a total capital contribution of \$14,708,354. This capital contribution amounts to a price of \$1.0575 for every \$1.00 of federal low income housing tax credit. This pricing comprehends 100% of residential depreciation being taken over 27.5 years; 100% of depreciation on site improvements being taken over 15 years; and 100% of depreciation on personal property being taken over 5 years. The allocation of the depreciable line items is subject to Red Stone's review and approval.
4. **Capital Contributions.** (a) Red Stone will fund its capital contribution of \$14,708,354 pursuant to the following schedule:

2 Grand Central Tower, 140 East 45th Street
15th Floor, New York, NY 10017
TEL: 212-297-1800 WEB: www.redstoneco.com

Charlotte ▪ Chicago ▪ Cleveland ▪ Los Angeles ▪ New York

- A. 15.0% (\$2,206,253) shall be paid upon the later of (a) the execution of the Company Agreement, (b) receipt and approval of all due diligence items on Red Stone's due diligence checklist, (c) receipt by the Company of commitment for a non-recourse permanent loan acceptable to Red Stone, (d) receipt of commitments of the additional financing sources described in Paragraph 12, and (e) closing and initial funding of the construction loan.
- B. 65.0% (\$9,560,430) shall be paid upon the later of (a) satisfaction of the funding conditions described in (B) above, and (b) achievement of 100% construction completion as certified by the project architect..
- C. 17.5% (\$2,573,962) upon the later of (a) satisfaction of the funding conditions described in (C) above, (b) receipt of final certificates of occupancy, (c) receipt of an architect's certificate of substantial completion, (d) receipt of the final cost certification from an independent certified public accountant, (e) repayment of the construction loan and funding of the permanent mortgage (f) satisfaction of all funding conditions required for the permanent mortgage, including without limitation, 3 consecutive months of a 1.15 Debt Service Coverage ratio ("DSC") and 90 days of 90% occupancy, and (g) achievement of 100% qualified occupancy..
- D. 2.5 % (\$367,709) upon the later of (a) satisfaction of the funding conditions described in (D) above, and (b) receipt of IRS Form 8609s and a recorded extended use agreement.

5. **Tax Credits.** The Project will receive an allocation of 9% federal low-income tax credits from the Texas Department of Housing and Community Affairs (the "Agency") in an amount not less than \$1,391,000 annually. The total Federal LIHTC anticipated to be delivered to the Company is \$13,910,000 (the "Projected Federal LIHTC"). The Projected Federal LIHTC will be available to the Company beginning in 2017, and it is expected that the Company will be allocated Federal LIHTC in the amounts of \$639,957 in 2017, \$1,391,000 in annually in each of the years 2018 through 2026, and \$751,043 in 2027. Any decision to delay the commencement date of the Federal LIHTC period beyond 2017 is subject to Red Stone's consent. In addition, any decision to commence the Federal LIHTC period prior to January 1, 2017 is subject to Red Stone's consent.

6. **Adjusters.**

- A. **Increase or Decrease in Credit.** In the event that Actual Federal LIHTC as determined by the 8609s exceeds Projected Federal LIHTC, Red Stone will pay an additional Capital Contribution equal to the product of (i) \$1.0575 for the Federal LIHTC multiplied by (ii) the difference between Actual LIHTC and Projected LIHTC. In the event that Actual Federal LIHTC are less than Projected Federal LIHTC as determined by the 8609's, Red Stone's capital contributions will be reduced by an amount equal to the product of (i) \$1.0575 multiplied by (ii) the difference between Projected Federal LIHTC and Actual Federal LIHTC ("Adjustment Amount"). If the Adjustment Amount exceeds the total of all unfunded capital contributions, then the Managing Member will make a payment to the Company equal to the amount of such

excess, and the Company will immediately distribute such amount to Red Stone as a return of its capital contribution.

- B. Timing of Credit Delivery. In addition to the Adjustment Amount, Red Stone's capital contribution will be similarly reduced in the event that the actual amount of Federal LIHTC for calendar years 2017 and 2018 are less than the amounts shown in Paragraph 5. The amount (the "Late Delivery Adjustment") of this reduction will equal \$0.65 multiplied by the difference in the projected Federal LIHTC and actual Federal LIHTC for such years are less than the amounts shown in Paragraph 5. Conversely, in the event that the amount of Federal LIHTC for calendar year 2015 is greater than the amounts shown in Paragraph 5 (the "Early Delivery Adjustment"), Red Stone will pay an additional capital contribution equal to the product of (i) \$0.40 multiplied by (ii) the difference between actual Federal LIHTC and projected Federal LIHTC. Red Stone will pay such additional capital contribution at the funding of the last capital contribution.

In no event will the additional Capital Contribution to be paid by Red Stone in Paragraphs 6A and 6B exceed 5% of the total original Capital Contribution amount, and Red Stone will pay such additional Capital Contribution at the funding of the Final Capital Contribution.

7. Reserves.

- A. Operating Reserve. The Company will fund and maintain an Operating Reserve to be funded from the 3rd Capital Contribution in an amount of \$400,000 (or the equivalent of 6 months Operating Expense & Debt Service as underwritten). Any release of funds from the Operating Reserve will be subject to Red Stone's consent. Upon expiration of the tax credit compliance period, any amounts remaining in this reserve account may be released to the Company, subject to the approval of any project lenders.
- B. Replacement Reserves. The Company will fund an initial deposit into the Replacement Reserve to be funded from the 3rd Capital Contribution in an amount of \$33,600. In addition, no later than permanent loan conversion, the Project operating expenses will include the funding of a Replacement Reserve in the amount of \$250 per unit, increasing at 3% per annum, or such greater amount specified by the project lenders. Any release of funds from the Replacement Reserve will be subject to Red Stone's consent.

8. Managing Member Guarantees. The Managing Member and the Guarantors will be responsible for the following items.

- A. Construction Completion Guarantee. The Managing Member and Guarantors shall guarantee lien-free completion of the Project in accordance with the plans and specifications approved by Red Stone for the amount set forth in the approved project development budget. The Completion Guarantee will provide that the Managing Members and Guarantors shall pay any amount in excess of the approved project development budget as well as any Project deficiency

arising prior to Stabilized Operations (as defined in 8B below). Any payments made hereunder shall neither be treated as a capital contribution nor as a loan, and shall not be repayable from cash flow.

- B. Operating Deficits. The Managing Member will advance the amount necessary to operate and maintain the Project until the Project achieves "Stabilized Operations". Stabilized Operations is defined as rental income generated from the Project is sufficient to pay all operating expenses of the Project, including, without limitation, all actual or anticipated mandatory debt service; real estate taxes; insurance premiums; management fees; and replacement and operating reserve deposits and maintain a debt service coverage ratio of not less than 1.15 to 1.00 for six consecutive months after funding and commencement of amortization of the Permanent Loan. The Managing Members and Guarantors shall be obligated to loan ("Operating Deficit Loan") the Project all funds needed to cover operating deficits during a 4-year period after the achievement of Stabilized Operations to a maximum amount of \$400,000; provided however, that such guarantee will be extended until such time as (i) the Project has achieved four (4) consecutive quarters of a 1.15 DSC at the end of such 4-year period and (ii) the Operating Reserve account maintains a minimum balance of \$400,000 (the "ODL Guaranty Period"). Notwithstanding the foregoing and subject to reasonable approval by Red Stone, the Guarantor shall be permitted to draw up to 50% of the Operating Reserve to fund deficit obligations prior to making any Operating Deficit Loans. Any such Operating Deficit Loan shall be unsecured, shall not bear interest and may be repaid out of cash flow or sale or refinance proceeds as provided below in Paragraphs 10B and C.
- C. LIHTC Shortfall or Recapture Event. In addition to the Tax Credit and Timing Adjusters set forth in Sections 6A and 6B, respectively, if the actual amount of LIHTC for any year is less than Projected LIHTC, the Managing Member and Guarantors will guarantee payment to the Investor Member of an amount equal to the shortfall, or recapture amount, plus all applicable fees, penalties or other costs incurred by the Company and/or Red Stone as a result of such shortfall or recapture. Notwithstanding the foregoing, the Guarantors shall not be responsible for loss or recapture of Housing Credits attributable to changes to the Code after the achievement of Stabilized Operations.
- D. Repurchase. The Managing Member will repurchase Red Stone's interest upon the occurrence of certain events described in the Operating Agreement.
- E. Guarantors. The Guarantors will guarantee all of the Managing Member's obligations. The Guarantors will maintain a minimum liquidity of \$1,000,000 and a minimum net worth of \$5,000,000. The Guarantors will provide Red Stone with annual financial statements evidencing the liquidity and net worth requirements.
9. Fees. The following fees will be paid by the Company for services rendered in organizing, developing and managing the Company and the Project.

- A. Developer Fee. The Developer will earn a developer fee of \$1,942,498. The portion of the developer fee that will be paid out of the Capital Contributions will be determined based on available cash developer fee at the time of closing. The cash developer fee shall be paid 25% at the 1st Capital Contribution, 25% at the 2nd Capital Contribution and the balance thereafter as available. The HUB Fee of \$174,825 will be excluded from the Cash Developer Fee calculation and will be paid 100% at Closing. The portion of the developer fee that will not be paid out of the Capital Contribution will be deferred and payable to the development entity. The deferred amount will accrue interest at the rate of 5.0% per annum, or such other interest rate acceptable to tax counsel, in effect as of the placed-in-service date of the project. The deferred amount will be payable out of available cash flow and will mature on the 12th anniversary of the placed-in-service date ("Maturity Date"). If the Developer Note has not been repaid upon the Maturity Date, the Managing Member will be required to advance the Company the amount equal to the unpaid balance of the deferred amount.
- B. Property Management Fee. The property management fee will not exceed a total of 5.0% of gross collected rents. If the management company is an affiliate of the Managing Member, then of the 5.0% property management fee, 3.0% will be paid as an operating expense and 2.0%, which will be cumulative, will be subject to available cash flow as shown in Paragraph 10(B). The appointment of and terms of the property management agreement are subject to the prior approval of Red Stone.
- C. Asset Management Fee. The Company will pay the Investor Member an annual asset management fee in an amount equal to \$5,000 per annum. The asset management fee will be paid annually and such fee shall accrue beginning on January 1, 2017, with the first payment due and payable on or before March 1, 2018, and each anniversary thereafter. The asset management fee will increase annually by 3.0%.
- D. Incentive Management Fee. An incentive management fee may be payable to the Managing Member on an annual basis in an amount equal to 90% of net cash flow, or such other amount as determined by and acceptable to tax counsel to Red Stone.

10. **Distribution of Tax and Cash Benefits.**

- A. **Tax Benefits.** Tax profits, tax losses, and tax credits arising prior to the sale or other disposition of the Project will be allocated 99.99% to the Investor Member, .001% to the Special Member and .009% to the Managing Member.
- B. **Net Cash Flow Distributions.** Distributions of net cash flow, as defined in the Operating Agreement, but generally all cash receipts less cash expenditures (e.g., payment of debt service and property management fee), will be made as follows: (i) to the Investor Member in proportion to any tax liability incurred by such partner; (ii) to the Investor Member, to make any payment of any unpaid tax credit adjuster or any tax credit shortfall; (iii) to the Investor Member as payment of any unpaid Asset Management Fee; (iv) to the payment of any unpaid developer fee, until such fee has been paid in full; (v) to the payment of the Operating Reserve if drawn below \$400,000; (vi) to the payment of any debts owed to the Partners; (vii) 90% to the payment of any incentive management fee, or such other amount as determined by and acceptable to tax counsel; and (viii) the balance, .009% to the Managing Member, .001% to the Special Member, and 99.99% to the Investor Member, or such other amount determined by and acceptable to tax counsel.
- C. **Distributions upon Sale or Refinance.** Net proceeds resulting from any sale or refinance will be distributed as follows: (i) to payment in full of any Company debts; (ii) to the establishment of any required reserves for contingent liabilities or obligations of the Company; (iii) to the Investor Member for any amounts owed to it, including without limitation for: any Adjuster Amount not previously paid, for any Investor Member advances or for any excess or additional capital contributions made by it; (iv) to the Investor Member in an amount equal to any projected federal income tax incurred as a result of the transaction giving rise to such proceeds; (v) to any unpaid asset management fee to the Investor Member; (vi) to the payment of any debts owed to the Managing Member or its affiliates including any unpaid developer fee; (vii) the balance, 90% to the Managing Member, .001% to the Special Member, and 9.999% to the Investor Member or such other amount as determined by and acceptable to tax counsel.

11. **Construction.** The Managing Member will arrange for a fixed or guaranteed maximum price construction contract. The Managing Member shall cause lien-free completion to occur and shall provide either a payment and performance bond or letter of credit in the amount of 15% of the construction contract to secure the Contractor's obligations. Red Stone may, in its sole discretion, consider accepting a guarantee from the General Contractor in lieu of a payment and performance bond or letter of credit. Furthermore, Red Stone may, in its sole discretion and expense, engage a construction consultant to review plans and specifications and evaluate the construction progress by providing monthly reports to the Company.

12. **Debt Financing.** As a condition to funding our capital contribution, the Managing Member will deliver the loan commitments described in subparagraphs A through B below. The terms of these loans

and/or financing sources are subject to Red Stone's consent and all loans will be made directly from the lenders to the Company.

- A. Permanent First Mortgage. The Company expects to receive a non-recourse permanent loan commitment in the maximum amount of \$3,525,000 (subject to Red Stone underwriting - Red Stone currently projects a \$3,325,000 permanent loan) with terms and conditions no less favorable than a fixed interest rate of 5.52%, a term of 18 years, a 35-year amortization, and a minimum Debt Service Coverage Ratio which is at least 1.15 to 1.00 (calculated utilizing a 7.0% vacancy factor) on all must-pay debt. Final loan sizing will be subject to final lender underwriting and Red Stone consent.
- B. Construction Loan. A construction loan in the maximum amount of \$15,000,000 with an approximate interest rate of 3.00% and a term of no less than 24 months.
- C. Predevelopment Loan. Red Stone will provide a predevelopment loan in the amount of \$400,000, \$200,000 which will be funded up execution of the loan documents and \$200,000 to be funded on February 15, 2016, or a later date if requested by OPG. The loan will carry a 100 basis point origination fee (\$4,000), with an interest rate of 5%, and will be repayable at the earlier of Closing or 9 months from the funding date.

13. Purchase Option and Right of First Refusal. For a period of two years following the compliance period, the Managing Member shall have an option to purchase the Project at the end of the compliance period for a purchase price equal to the greater of (i) fair market value or (ii) the sum of the amount of indebtedness secured by the Project, which indebtedness may be assumed by the Managing Member at its discretion, the amount of the federal, state, and local tax liability that the Investor Member would incur as a result of the sale and any amount of credits below the amount stated in Paragraph 3. If the Managing Member is a not for profit entity, the purchase price shall be the amount required pursuant to Section 42(i) of the Code. The Managing Member shall also have the option to purchase the Investor Member interest for market value as-restricted.

14. Due Diligence, Opinions and Financial Projections. The Managing Members will satisfy all of Red Stone's due diligence requirements, including an acceptable local law opinion. The Investor Member's tax counsel will provide the tax opinion. The Company will reimburse the Investor Member an amount equal to \$35,000 toward the costs incurred by the Investor Member in conducting its due diligence review and for the costs and expenses of Red Stone's counsel (which will be Applegate & Thorne-Thomsen) and in connection with the preparation of the tax opinion, and for the costs of Red Stone's other third party reports, including without limitation, environmental, construction and market study updates, if required. Red Stone may deduct this amount from its first Capital Contribution and such amount will be payable to Red Stone in the event the Managing Member elects not to close the transaction for any reason.

15. Company Closing. Final Company closing will be contingent upon Red Stone's receipt, review and approval in its sole discretion of all due diligence including the items set forth on its due diligence checklist previously delivered to the Managing Member. Final Company closing also is contingent

upon (i) a satisfactory site visit conducted by Red Stone to determine overall market feasibility, including an analysis of proforma rents and expenses and (ii) Red Stone's review and approval of all third party reports. Red Stone's agreement to acquire the LP Interest on the pricing, terms and conditions contained in this letter are further based on the assumption that the Company closing will occur on or before March 31, 2016.

16. **Exclusivity**. Upon the execution of this Letter of Intent, the Managing Member agrees to cease its efforts to obtain financing from other sources. This exclusive arrangement shall terminate should Red Stone notify the Managing Member in writing that it does not intend to proceed with this investment any time prior to ratification by the Red Stone Board of Directors.

17. **Other Matters**. The Investor Member has predicated this proposal on the financial projections it has prepared which are based upon the financial and other information furnished by the Managing Member or its agents, as well as certain assumptions of the federal income tax consequences of this transaction. Changes in tax regulations or other assumptions could affect the financial projections and thus, the amount and terms of the Capital Contribution.

The Reserves at Preston Trails

Wolfforth, TX

December 21, 2015

Page 9

Please confirm your acceptance of the terms described in this letter by signing the enclosed counterpart and returning to us at the address set forth on the first page of this letter. The terms of this letter are not binding until countersigned and accepted by an authorized officer of Red Stone.

Sincerely,

A handwritten signature in black ink, appearing to be 'AJF', written over a horizontal line.

By: _____

Name: Andrew J. Foster

Title: Senior Vice President

The undersigned approves and accepts the terms of this letter agreement and agrees to work with Red Stone.

MANAGING MEMBER:

By: OPG PT Managers, LLC,
A Texas Limited Liability Company

By: _____
Date: _____

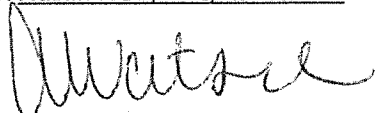
GUARANTOR:

By: Brett Johnson

Its: _____
Date: _____

MANAGING MEMBER:

By: Austin HUB, LLC, its Member



By: Audrey Watson, Manager

Date: 12/22/15

GUARANTOR:

By: Pat Beatty

Its: _____
Date: _____

GUARANTOR:

By: Rex Vanier

Its: _____
Date: _____

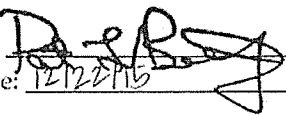
Red Stone acknowledges and accepts the above signature of the Managing Member within the terms of this commitment letter. This letter of intent was countersigned by Red Stone on the _____ day of _____, 2016.

By: _____
Title: _____
Date: _____

The undersigned approves and accepts the terms of this letter agreement and agrees to work with Red Stone.

MANAGING MEMBER:

By: OPG PT Managers, LLC,
A Texas Limited Liability Company

By: 
Date: 12/22/15

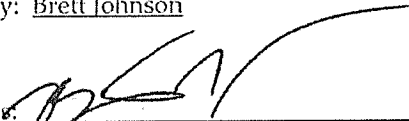
MANAGING MEMBER:

By: Austin HUB, LLC, its Member

By: Audrey Watson, Manager
Date: _____

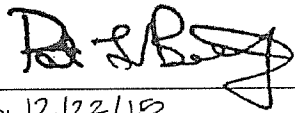
GUARANTOR:

By: Brett Johnson

Its: 
Date: 12/22/15


GUARANTOR:

By: Pat Beatty


Its: 
Date: 12/22/15

GUARANTOR:

By: Rex Vanier

Its: 
Date: 12/22/15

Red Stone acknowledges and accepts the above signature of the Managing Member within the terms of this commitment letter. This letter of intent was countersigned by Red Stone on the _____ day of _____, 2016.

By: 
Title: Robert U. Fein
Date: _____ Chief Operating Officer



McPHERSON

CONTRACTORS, INC.

Michael E. McPherson

Bruce M. McPherson

February 25, 2015

Mr. Cameron Dorsey, Administrator
Multifamily HOME Program
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Dear Mr. Dorsey:

In accordance with the HOME program rules regarding the value of donated services counted as match for a TDHCA HOME award, McPherson, Inc. agrees to donate services and building materials valued at \$27,250 to The Reserves at Preston Trails in Wolfforth, Texas project. These materials may include lumber, fasteners, sheetrock, and other building materials typically provided by our company. If awarded HOME funds, we will develop a formal agreement that outlines in detail the scope of work to be performed by our company and the value of these materials.

If you have any questions or require clarification, please let me know.

Sincerely,

Jane A. Gunn
Secretary-Treasurer

William W. Sims • Jane A. Gunn • Matthew C. McPherson



September 10, 2015

Overland Property Group, LLC
Attn: Brett Johnson
5345 W. 151st Terr.
Leawood, KS 66224

Dear Mr. Johnson:

Please accept this letter as a firm commitment from the Wolfforth Economic Development to provide a loan to Overland Property Group Preston Trails Partners for the construction of 112 apartment units, known as The Reserves at Preston Trails. The Reserves at Preston Trails will consist of 96 low income housing tax credit units and 16 market rate units. The loan is for a \$53,760, to be paid out of available cash flow and not subject to annual must-pay debt service. Interest rate will not exceed 3%, and the term is a minimum of 15 years, with an amortization period of at least 30 years.

These funds were not previously provided to the Wolfforth Economic Development Corporation by OPG Preston Trails Partners, LLC or any related party of OPG Preston Trails Partners, LLC.

I have enclosed a copy of the original resolution of support from Wolfforth EDC, as well as a copy of the Wolfforth City Council minutes approving the project.

Please feel free to call or email if you have any additional needs or concerns. We look forward to a long and successful community partnership with the Reserves at Preston Trails.

Sincerely,

Mike Wright
Board President

Wolfforth Economic Development Corporation

P.O. Box 36 · Wolfforth, TX 79382 · PHONE: 806-866-4215 · FAX: 806-866-4217 · wolfforthedc.org · edc@wolfforthtx.us

Wolfforth Economic Development Corporation Resolution for The Reserves at Preston Trails

Whereas, OPG Preston Trails Partners, LLC has proposed a development for affordable rental housing named The Reserves at Preston Trails in the City of Wolfforth; and

Whereas, there is a need for affordable housing for the City of Wolfforth citizens of modest means; and

Whereas, OPG Preston Trails Partners, LLC intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2015 Low Income Housing Tax Credit Program funds for The Reserves at Preston Trails; and

Whereas, the application for the funding of tax credits requires a match of local funds in the form of a loan or in kind contribution.

Be it resolved that:

This resolution affirms Wolfforth Economic Development Corporation's support for the above named development; and

Wolfforth EDC is not a related party to the Applicant; and

At a duly called meeting on February 2, 2015, the Wolfforth City Council approved a motion to support the OPG Preston Trails Partners, LLC project; and


This resolution is a firm commitment from Wolfforth EDC, subject to the approval of the Wolfforth City Council, for the purposes of Commitment of Development Funding by a Local Political Subdivision in the amount of at least \$560 per low-income housing tax credit unit; and

These funds will be in the form of an in-kind contribution, construction and/or permanent loan (with an interest rate no higher than 3 percent per annum and term of at least 15 years with a minimum amortization period of thirty (30) year), or combination thereof. This contribution will directly support the development; and


That any funds committed to this development have not been first provided to the City of Wolfforth EDC by the Applicant or a Related Party; and

City of Wolfforth governing body appoints one hundred percent (100%) of the governing board of the Wolfforth EDC.

Resolved this date 19th day of February, 2015.


Board President

Attest:


Secretary

MINUTES

2/23/15

The Wolfforth City Council met in called session on Monday, February 23, 2015, in the City Hall Meeting Room, 302 Main Street, Wolfforth, Texas. Mayor Addington called the meeting to order at 6:00 p.m.

Attending:

Mayor Addington
Councilwoman Merrill
Councilman MacNair
Councilman Gross
Councilman Vardy
Councilman Cooper

Guests: None

Others: Darrell Newsom, Debbie Perkey

Mayor Addington gave the invocation and Councilman Gross led the Pledge of Allegiance.

Following a brief discussion, Councilman Gross moved to approve the proposed Wolfforth Economic Development Corporation project to provide a loan for the affordable housing apartment complex, at \$560 per door, for a total of \$80,640. Councilman MacNair made the second and the motion passed unanimously.

Councilman Vardy moved to approve the proposed EDC project to fund a water line loop in Patel Business Park, to increase water pressure and improve development opportunities, for a total of \$28,671. Councilman MacNair voiced the second and the motion carried unanimously.

Councilman MacNair moved to adjourn, Councilman Cooper seconded and the motion passed unanimously. The meeting adjourned at 6:10 p.m.

5

BOARD ACTION REQUEST

COMPLIANCE DIVISION

APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding an appeal of disallowed costs under the HOME program for Ebenz Inc.

RECOMMENDED ACTION

WHEREAS, in 2012 Ebenz Inc. (“Ebenz”) was awarded a HOME agreement to provide single family rehabilitation and reconstruction activities that resulted in funds awarded for four houses;

WHEREAS, Ebenz was monitored in November 2015, and two findings were cited in the monitoring report ((1) failure to ensure that procurement requirements were met and (2) failure to ensure that costs requested for reimbursement were properly supported) resulting in disallowed amounts for which repayment was required;

WHEREAS, based on further review by the Compliance Division staff and allowance of certain costs, despite the related procurement being minimally compliant, the amount of disallowed costs has been adjusted in Ebenz’ favor and determined to be \$73,720.78;

WHEREAS, Ebenz has met with the Compliance Division staff and the Compliance Committee, but at no point in these review processes has Ebenz provided any information or supporting documentation that would cause Department management to question the correctness of the Compliance Division’s findings or treatment of these matters;

WHEREAS, Ebenz has stated that it disagrees with the Department’s assessment, has exhausted all staff options for review provided in the Texas Administrative Code, and has appealed to the Board on this matter; and

WHEREAS, TDHCA, as the pass through entity, may incur financial exposure to HUD for repayment of disallowed costs if Ebenz does not repay them;

NOW, therefore, it is hereby

RESOLVED, that the appeal of Ebenz Inc. is denied and the Executive Director and his designees are authorized, empowered, and directed on behalf of the Department to take all actions necessary to collect the amounts owed and any other appropriate actions.

BACKGROUND

In 2012, Ebenz, Inc. (“Ebenz”) received a Reservation Agreement that resulted in an award of funds under the HOME Homeowner Rehabilitation Assistance (“HRA”) general set aside in the amount of \$193,037.50

and in the Persons with Disabilities (“PWD”) set-aside in the amount of \$192,927.16. Those funds were to be used to provide rehabilitation or reconstruction assistance to four households. Both set aside agreements expired on October 3, 2014. Construction was completed for three homes. Construction of the fourth home has not been completed and has been the subject of prior board actions. Ebenz Inc. has to date drawn down \$284,479.70 in HOME funds.

On October 16, 2015, the Department’s HOME Division was contacted by a construction company named Partly Art, indicating that it had not been paid for work completed at 2808 Arkansas in League City, TX, one of the homes for which Ebenz was obligated to provide assistance with HOME funds. The Department’s records showed that this address had been completed and all funds had already been paid to Ebenz Inc. Contractor invoices had been provided to the Department by Ebenz as support for the funds drawn. The Department had no invoices from Partly Art Company and no record that Partly Art had been procured by Ebenz or involved with the activity. As a result of the complaint, the Subrecipient Monitoring Section of the Compliance Division initiated a review of Ebenz. On October 20, 2015, the Department provided notice of the review and requested documentation. (See attached monitoring announcement letter). Note that the request for review documentation included procurement documentation and income and program participation support documentation along with verification of deposits and expenditures. The request listed the specific addresses involved.

Income and program participation support documentation was received on November 20, 2015, the 30 day deadline provided in the announcement letter. Ebenz did not provide the requested bid documentation, construction contracts, or expenditure support for any activities. As a result, a monitoring report (attached) with findings and total questioned costs of \$182,672.50 was issued on November 30, 2015, with a response due date of December 30, 2015. The breakdown of findings was as follows:

- Finding 1: Ensure Procurement Requirements are Met
- Finding 2: Ensure Costs Requested for Reimbursement Are Properly Supported

	Reimbursed Costs
<u>HOME HRA Contract No. 1001695</u>	
38983 – 6518 Anderson St	\$88,389.75
39886 – 3010 8th Ave N	\$5,157.68
<u>HOME HRA Contract No. 1001696</u>	
39242 – 2808 Arkansas Ave	<u>\$89,125.07</u>
Total Questioned Costs	\$182,672.50

On December 29, 2015, the Department received a response from Ebenz that did not resolve the findings. The bids submitted, all from non-affiliated contractors, included the same language, font, and specifications (copies attached). These similarities cast doubt on the authenticity of the bids originating from unrelated sources. Department staff met with Mr. Anene of Ebenz on January 15, 2016, and provided him the opportunity to explain his corrective action submission. Subsequently Mr. Anene provided a memo

describing the procurement process, and it was determined that although it lacked detail, it was compliant. The finding “Ensure procurement requirements are met” was closed.

To address the “Ensure costs requested for reimbursement are properly supported” Ebenz submitted carbon copies of check remittances. Those were compared with bank statements submitted as part of the review. The documentation supplied by Mr. Anene supported \$68,046.15, reducing the questioned costs to \$114,626.35.

On January 29, 2016, and February 5, 2016, Ebenz submitted additional copies of checks for review, and the Department was able to further reduce the questioned amount to the final disallowed amount of \$73,720.78. Mr. Anene requested detail for this amount and was provided a spreadsheet detailing both supported and unsupported reimbursed expenditures (attached). A final report with the reduced disallowed costs was submitted to Ebenz on February 9, 2016 (attached).

The monitoring rules (10 TAC §20.15(l)) provide administrators the opportunity to have their compliance issues reviewed by the Chief of Compliance, Patricia Murphy, and/or the Compliance Committee. Ms. Murphy met with Mr. Anene on March 3, 2016. Mr. Anene did not provide any other supporting documentation for the disallowed amount.

Next Mr. Anene exercised his option to meet with the Department’s Compliance Committee. That meeting was held on April 5, 2016. The Compliance Committee concluded that Compliance staff appropriately interpreted and applied the rules and that the finding in question and associated disallowed costs were appropriately identified. (See attached.)

Mr. Anene’s appeal was denied by the Executive Director, Tim Irvine on April 19, 2016. (See attached.)

Use of federal funds is subject OMB requirements. These contracts were subject to OMB Circular A-122. Attachment A, Section A, Basic Consideration states:

- Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:*
- 1. Be reasonable for the performance of the award and be allocable thereto under these principles.*
 - 2. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.*
 - 3. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.*
 - 4. Be accorded consistent treatment.*
 - 5. Be determined in accordance with generally accepted accounting principles (GAAP).*
 - 6. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.*
 - 7. Be adequately documented.*

Use of federal funds is also subject to federal requirements. These contracts were subject to 24 CFR§84.21 which states:

Standards for financial management systems.

(a) HUD shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 84.52. If a recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMLA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMLA Treasury-State Agreements or the CMLA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

Ebenz, through Mr. Anene, drew down federal HOME funds and is not able to document in accordance with applicable OMB requirements that \$73,720.78 of the funds drawn were used on the construction of these homes. Staff recommends denial of the appeal.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
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J.B. Goodwin

October 20, 2015

Mr. Ebenezer Anene
President
EBENZ, Inc.
Dickinson, TX 77539
Email: obia54@yahoo.com

RE: Announcement of Scheduled *Desk* Monitoring Review
HOME HRA Contract No. 1001695
HOME HRA PWD Contract No. 1001696

Dear Mr. Anene:

The Texas Department of Housing and Community Affairs (the Department) will conduct a desk review of the above-referenced contracts. The review is being conducted to ascertain the level of compliance with select requirements of the HOME Investment Partnership Program.

Attached is a list of specific documentation that must be submitted to the Department for review no later than **November 20, 2015**. Submit the requested documentation for the following activity numbers:

HOME HRA Contract No. 1001695

- 1. 38983 – 6518 Anderson St
- 2. 39886 – 8th Ave N.

HOME HRA/PWD Contract No. 1001696

- 1. 39242 – 2808 Arkansas Ave.

The results of the desk review will be communicated upon completion. Please note the results of the review do not exempt EBENZ, Inc, from being selected for an on-site monitoring visit in the future. If you have any questions or concerns regarding this review, please feel free to contact me via email at lorrie.lopez@tdhca.state.tx.us.

Sincerely,

Lorrie Lopez
Contract Monitor

lkl

cc: Jennifer Molinari, TDHCA Director of HOME
Homero Cabello, TDHCA Director of Single Family Operations and Services



Texas Department of Housing & Community Affairs
Requested Items for Desk Review of HRA Contract No. 1001695 & Contract No. 1001696

Please submit copies of the following documents by November 20, 2015 identified in the cover letter to the Department or upload the documents to our secure server.

Assure that all documents are submitted. Please note that the documents do not have to be submitted in the order listed; but, should be submitted in one package and not piecemeal.

Contract No. 1001695 & Contract No. 1001696

Procurement Documentation (Submit Contractor of All Activities noted)

- Procurement Packet (i.e. Request for Proposal, Invitation for Bid, etc.)
- System for Award Management (SAM) (formally Excluded Parties List System) printouts for all subcontractors/builders/contractors/professional services
- For the procurement of small purchases submit bid or support documentation
- Amount of award
- *Copy of contract between Administrator and Contractor/Builder*
- Names of entities that submitted bids with amounts
- Number of bids received
- Names of evaluators
- Copy of award letter to builder and letters sent to non-awardees
- Supporting documents based on method of procurement:
 - Sealed Bid Specific
 - Public Advertisement
 - Selection Analysis (Scoring)
 - Date, time and location of public opening
 - Competitive
 - Public Advertisement
 - Selection Analysis (Scoring)
 - Sole Source
 - Documentation to justify availability from one source
 - Non-Competitive
 - Public Advertisement
 - Response(s)

Income Eligibility (for requested Activity 39886 & Activity 39242)

- Income verifications for all source of income, i.e.
 - pay stubs
 - social security award letters
 - third-party verification forms
 - divorce decree
- Asset verifications for all asset sources for initial certification, i.e.
 - savings account statements
 - 401 K statement
 - checking account statements (to calculate 2-month average)

Program Participation (for requested Activity 39886 & 39242)

- Certification of Principal Residence Form

Verification of Deposits and Expenditures (for All Activities noted)

- Provide the following documentation for the activities listed below:
 - 1) Copies of the checks to vendors (or check image in the bank statement) for payments,
 - 2) Bank statements that show cleared checks and
 - 3) Bank statements that show when the following program funds were deposited from the Texas Comptroller of Public Accounts:

Announcement of Scheduled Desk Monitoring Review, Contract No. 1001695 & 1001696

October 20, 2015

Page 3

	<u>Activity#</u>	<u>Address</u>	<u>Draw No.</u>	<u>Amount</u>
o	38983	6518 Anderson St	1	\$12,149.00
			2	\$26,247.00
			3	\$2,984.05
			4	\$47,009.70
o	39886	3010 8th Ave N	1	\$5,157.68
o	39242	2808 Arkansas Ave	1	\$3,950.00
			3	\$29,646.00
			4	\$55,529.07



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

November 30, 2015

(512) 475-4608
earnest.hunt@tdhca.state.tx.us

Mr. Ebenezer Anene
President
EBENZ, Inc.
Dickinson, TX 77539
Email: obia54@yahoo.com

RE: Monitoring Report of *Desk* Review Conducted November 23, 2015
HOME HRA Contract No. 1001695
HOME HRA PWD Contract No. 1001696

Dear Mr. Anene:

The Texas Department of Housing and Community Affairs (the Department) conducted a monitoring review of the above mentioned contracts. The goal of the review was to provide reasonable but not absolute assurance regarding compliance with federal and state requirements and program objectives.

To achieve this goal, a sample of files and expenditures were selected and tested. The attached report details the findings identified during the review and required corrective action. Please provide all requested documentation no later than **December 30, 2015**.

If EBENZ, Inc. applies for funding from the Department a Previous Participation review will be conducted. The findings noted in this report, as well as the timeliness and effectiveness of the corrective action provided will be taken into consideration and reported to the Department's Executive Award Review Advisory Committee (EARAC).

The Department wishes to express our appreciation for the cooperation of your staff in facilitating this review. If you have any questions or concerns regarding this review, please feel free to contact me or Lorrie Lopez via email at lorrie.lopez@tdhca.state.tx.us.

Sincerely,

EARNEST L. HUNT
Earnest L. Hunt
Manager, Contract Monitoring

lkl

cc: Jennifer Molinari, TDHCA Director of HOME
Homero Cabello, TDHCA Director of Single Family Operations and Services

221 East 11th Street P.O. Box 13941 Austin, Texas 78711-3941 (800) 525-0657 (512) 475-3800



Finding 1: Ensure Procurement Requirements are Met

EBNEZ, Inc. (EBNEZ) did not follow required federal and state procurement processes for the procurement of construction services. Upon review of EBENZ's procurement documentation, the following items were not provided to complete monitoring testing to determine adherence to procurement requirements:

HOME HRA Contract No. 1001695

38983 – 6518 Anderson St

- Construction contract with Icatex Construction
- Bid submitted by PJ Construction
- Bid submitted by Estanislao Sustaita Construction
- Bid submitted by Niit Construction
- Bid submitted by J & A Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Icatex Construction
- **Questioned Costs: \$88,389.75**

39886 – 3010 8th Ave N

- Construction contract with Sustaita Construction
- Bid submitted by PJ Construction
- Bid submitted by Estanislao Sustaita Construction
- Bid submitted by Icatex Company
- Bid submitted by Unotec Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Estanislao Sustaita Construction
- **Questioned Costs: \$5,157.68**

HOME HRA Contract No. 1001696

39242 – 2808 Arkansas Ave

- Construction contract with Icatex Construction
- Executed construction contract with Partly Art Company
- Bid submitted by PJ Construction
- Bid submitted by Estanislao Sustaita Construction
- Bid submitted by Niit Construction
- Bid submitted by J & A Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Icatex Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Partly Art Company
- **Questioned Costs: \$89,125.07**

Additionally, review of the documentation provided indicated the following issues:

- Posting/publication for the following Request for Proposal (RFP) was not provided For June 10 & 11, 2013 bid opening. Per EBENZ, "Ebenz Inc. contacted several contractors and invited them to participate in the pre-bid for the HRA program for home reconstruction and renovation of qualified and approved homes. They were referred to by letter prior to the home program advertisement in the **Green Sheet dated October 2012** for a week and ran again in **March 13, 2013**. This pre-bid did establish contact list for interested contractors."

- Request for Proposal (RFQ) for construction services posting/publication advertised in the Green Sheet dated April 14, 2014 with a Pre-bid date: April 16, 2014 and Bid date and Opening April 17, 2014 was provided.

24 Code of Federal Regulations (CFR) §84.44 Procurement procedures states:

... (e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in HUD's implementation of Circular A-110.

(2) The procurement is expected to exceed \$100,000 or the small purchase threshold fixed at 41 U.S.C. 403 (11), whichever is greater, and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

Failure to adhere to procurement rules and regulations can result in the awarding of a contract to an entity whose service is not the most advantageous to the program, reimbursement of funds to the Department, or the Department may not reimburse the contract administrator for funds paid to the entity.

Required Corrective Action:

EBENZ, Inc. must submit to the Department the following procurement documentation on or before the corrective action due date. *Finding 1 and Finding 2 Combined Questioned Costs: \$182,672.50*

HOME HRA Contract No. 1001695

38983 – 6518 Anderson St

- Construction contract with Icatex Construction
- Bid submitted by PJ Construction
- Bid submitted by Estanislao Sustaita Construction
- Bid submitted by Niit Construction
- Bid submitted by J & A Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Icatex Construction

39886 – 3010 8th Ave N

- Construction contract with Sustaita Construction
- Bid submitted by PJ Construction
- Bid submitted by Estanislao Sustaita Construction
- Bid submitted by Icatex Company
- Bid submitted by Unotec Construction

- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Estanislao Sustaita Construction

HOME HRA Contract No. 1001696

39242 – 2808 Arkansas Ave

- Construction contract with Icatex Construction
- Executed construction contract with Partly Art Company
- Bid submitted by PJ Construction
- Bid submitted by Estanislao Sustaita Construction
- Bid submitted by Niit Construction
- Bid submitted by J & A Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Icatex Construction
- Provide a copy of System for Award Management (SAM) (formally Excluded Parties List System) printout for Partly Art Company

EBENZ, Inc.

- EBENZ, Inc procurement policies and procedures
- Posting/publication for the following Request for Proposal (RFP) was not provided For June 10 & 11, 2013 bid opening.

Finding 2: Ensure Costs Requested for Reimbursement Are Properly Supported

Costs requested for reimbursement by EBENZ, Inc. were not adequately supported. The following issues were noted.

HOME HRA Contract No. 1001695

38983 – 6518 Anderson St

- No supporting documentation was provided all draws. **Questioned costs \$88,389.75**

39886 – 3010 8th Ave N

- No supporting documentation was provided all draws. **Questioned costs \$5,157.68**

HOME HRA Contract No. 1001696

39242 – 2808 Arkansas Ave

- No supporting documentation was provided all draws. **Questioned costs \$89,125.07**

Additionally, the following conflicting information was provided:

- Construction Costs for HOME Contract No. 1001696 Activity 39242:
 - o **11/3/2015** – Letter to TDHCA HOME Division, Per EBENZ's, "The ICATEX Company the contractor informed Ebenz that he did not have enough labor force and finances to continue the construction. He was willing to have another contractor help till funds become available."
 - o **12/12/2014** – ICATEX Comply Invoice No. 1 for ground/foundation work (invoice does not include demolition).
 - o **3/16/2015** – Agreement start date for construction contract between Ebenz, Inc and Partly Art Company for construction of 2808 Arkansas.
 - o **3/24/2015** – ICATEX Company Invoice No. 2 included request for demolition costs.
 - o **3/24/2015** – ICATEX Company Invoice No. 3 for driveway/accessibility costs.
 - o **3/24/2015** – ICATEX Company Invoice No. 4 for accessibility costs.
 - o No invoices from Partly Art Company were provided.

OMB Circular A-122 Attachment A, Section A. Basic Consideration states:

2. *Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria:*

1. *Be reasonable for the performance of the award and be allocable thereto under these principles.*
2. *Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.*
3. *Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the organization.*
4. *Be accorded consistent treatment.*
5. *Be determined in accordance with generally accepted accounting principles (GAAP).*
6. *Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.*
7. *Be adequately documented.*

Without documentation to adequately support costs, there is no assurance that federal or state funds are expended on allowable costs.

Required Corrective Action:

EBENZ, Inc. must submit to the Department documentation to support the costs charged to the contract for the amounts listed below or reimburse the funds to the Department by the amounts listed below on or before the corrective action due date. *Finding 1 and Finding 2 Combined Questioned Costs: \$182,672.50*

	<u>Reimbursed Costs</u>
<u>HOME HRA Contract No. 1001695</u>	
38983 – 6518 Anderson St	\$88,389.75
39886 – 3010 8th Ave N	\$5,157.68
<u>HOME HRA Contract No. 1001696</u>	
39242 – 2808 Arkansas Ave	<u>\$89,125.07</u>
Total Questioned Costs	<u>\$182,672.50</u>

At minimum, EBENZ, Inc. must provide the following documentation for the costs listed above:

- 1) Copies of invoices/timesheets, etc. for all costs charged to the program,
- 2) Copies of the checks to vendors (or check image in the bank statement) for payments and
- 3) Bank statements that show cleared checks.

General Observations:

During the case file review of HOME Contract No. 101695 and HOME Contract No. 100696, Department staff noted the following items of concern which do not require corrective action submitted to the Department. Procedures should be developed to ensure these concerns are corrected in the future:

- **Ensure Verification of Income.** Review of two (2) files indicated income support documentation was not provided for the following:

HOME HRA Contract No. 1001695

- 39886 – 3010 8th Ave N
– Retirement award letter not provided

HOME HRA Contract No. 1001696

39242 – 2808 Arkansas Ave

- Schedule C to support Household Income Certification dated 5/20/2014 not provided

Although, income eligibility of these activities was not affected, failure to provide income support documentation could result in an ineligible household. The Department provides income training in accordance with the HUD Handbook 4350.3 for the benefit of all program administrators and staff. The Department encourages all staff responsible for screening eligibility of applicants to attend this training. In the future, EBENZ, Inc. must ensure all income verification documentation is provided.

- **Ensure Complete Disclosure of Assets.** Activity No. 39242 reviewed did not properly disclose asset information on the Intake Application and Household Income Certification (HIC). Without ensuring the complete disclosure of an applicant's assets on the HIC, EBENZ, Inc. is unable to ensure an applicant is income eligible. If a question or a portion of the form does not apply to the applicant, "N/A" or "\$0" should be inserted demonstrating the applicant has read and answered the question(s). In the future, EBENZ, Inc. must ensure complete disclosure of all asset information on the HIC and Intake Application to ensure applicant eligibility.

Monitoring Scope:

The scope of the monitoring review was to determine if HOME funds were used to assist eligible households and whether those funds were expended in accordance with applicable federal and state regulations and contractual requirements. Department staff conducted the following steps:

HOME HRA Contract No. 1001695

- Reviewed two (2) activity files:
 - 38983 – 6518 Anderson St
 - 39886 – 3010 8th Ave N
- Reviewed financial records.
- Reviewed procurement documentation.

HOME HRA Contract No. 1001696

- Reviewed one (1) activity file:
 - 39242 – 2808 Arkansas Ave
- Reviewed financial records.
- Reviewed procurement documentation.

PJ CITY CONSTRUCTION COMPANY

10881 RICHMOND AVE, STE 1709, HOUSTON, TX 77042-4725. 832-768-3364 EMAIL: PETER.SIR75@YAHOO.COM

-
-
-

Date- 04-17-2014

Demolition cost \$7,500.00

As per the TDHCA rules, Plans and specifications
and city of Texas City building code including but
not limited to Foundation, framing, roofing, siding
Plumbing, electrical, A/C, drywall,
Trims, painting and all finishes.

\$75,750.00

Address to the property: 6518 Anderson Street Texas City
3010 8th Ave. N Texas City

Jack, P.

SUSTAITA CONSTRUCTION

Tel: 832-723-1925 April 17th 2014
BID FOR STATE PROJECT

ADDRESS: 6518 Anderson street Texas City 77591
2808 Arkansas League City 77573

Demolition cost	\$9,700.00
Foundation, framing, roofing, siding Plumbing, electrical, A/C, drywall, Trims, painting and all finishes	\$78,100.00

DEMOLITION AND CONSTRUCTION BID

Date: April 17th 2014

ADDRESSES: 6518 Anderson street Texas City 77591
2808 Arkansas League City 77573

Demolition of existing home structure and clean-up	\$5,916.00
Dirt, set form, compaction and foundation slab pour	
Framing, hurricane clips bracing	
Windows and doors, roofing, siding	
Plumbing, electrical, A/C, insulation, drywall, fixtures	
Trims, cabinets, flooring, painting, all finishes, Exterior	
grading and landscaping	\$75,004.00
TOTAL	\$80,920.00

J&A construction

1914 Romans Houston, TX 77012

DEMOLITION AND CONSTRUCTION BID

Ebenz Inc/TDHCA

Date: April 17th 2014

ADDRESSES: 6518 Anderson street Texas City 77591
2808 Arkansas League City 77573

Demolition of existing home structure and clean-up	\$7,000.00
Foundation slab pour Framing, hurricane clips bracing Windows and doors, roofing, siding, Plumbing, electrical, A/C, insulation, drywall, fixtures, trims, cabinets, flooring, painting and all finishes.	\$78,900.00
TOTAL	\$85,900.00

Property	Invoice Date	Payee/Vendor	Supported Amount Per Invoice	Total Amount Per Vendor	Payment Verified Per Bank Statements/Check Carbons/Check Images	Total Unsupported Amount
6518 Anderson St	8/18/2014	A & E Graphics	\$ 29.77			
2808 Arkansas Ave	5/22/2014	A&E The Graphic Complex	\$ 29.77	\$ 59.54	\$ -	\$ (59.54)
<hr/>						
2808 Arkansas Ave	11/4/2014	Dwight D Sullivan County Clerk	\$ 120.00	\$ 120.00	\$ -	\$ (120.00)
<hr/>						
2808 Arkansas Ave	11/4/2014	Galveston County Clerk	\$ 123.30			
2808 Arkansas Ave	7/14/2014	Galveston County Clerk	\$ 38.00			
6518 Anderson St	2/25/2014	Galveston County	\$ 120.00			
6518 Anderson St	2/27/2014	Galveston County	\$ 38.00			
6518 Anderson St	12/17/2014	Galveston County	\$ 38.00			
3010 8th Ave N	11/4/2014	Galveston County	\$ 120.00	\$ 477.30	\$ 38.00	\$ (439.30)
<hr/>						
6518 Anderson St	7/28/2014	Icatex Company	\$ 9,099.00			
6518 Anderson St	10/8/2014	Icatex Company	\$ 25,947.00			
6518 Anderson St	2/27/2015	Icatex Company	\$ 39,703.75			
6518 Anderson St	2/27/2015	Icatex Company	\$ 1,300.00			
2808 Arkansas Ave	12/12/2014	Icatex Company	\$ 29,646.00			
2808 Arkansas Ave	3/24/2015	Icatex Company	\$ 46,034.00			
2808 Arkansas Ave	3/24/2015	Icatex Company	\$ 5,000.00			
2808 Arkansas Ave	3/24/2015	Icatex Company	\$ 1,010.00	\$ 157,739.75	\$ 91,780.07	\$ (65,959.68)
<hr/>						
6518 Anderson St	7/1-31/2013	Leticia Anene	\$ 361.70			
6518 Anderson St	8/1-31/2013	Leticia Anene	\$ 746.01			
6518 Anderson St	10/1-31/2013	Leticia Anene	\$ 429.52			
6518 Anderson St	1/1-31/2014	Leticia Anene	\$ 384.31			
6518 Anderson St	2/1-28/2014	Leticia Anene	\$ 610.38			
6518 Anderson St	5/1-31/2014	Leticia Anene	\$ 452.13			

Property	Invoice Date	Payee/Vendor	Supported Amount Per Invoice	Total Amount Per Vendor	Payment Verified Per Bank Statements/Check Carbons/Check Images	Total Unsupported Amount
6518 Anderson St	6/1-30/2014	Leticia Anene	\$ 700.80			
3010 8th Ave N	8/1-31/2014	Leticia Anene	\$ 994.69			
3010 8th Ave N	11/1-30/2014	Leticia Anene	\$ 1,356.39			
2808 Arkansas Ave	12/1-31/2012	Leticia U Anene	\$ 107.65			
2808 Arkansas Ave	1/3-31/2013	Leticia U Anene	\$ 236.83			
2808 Arkansas Ave	2/1-28/2013	Leticia U Anene	\$ 344.48			
2808 Arkansas Ave	3/1-31/2013	Leticia U Anene	\$ 409.07			
2808 Arkansas Ave	9/1-30/2013	Leticia U Anene	\$ 538.25			
2808 Arkansas Ave	11/1-30/2013	Leticia U Anene	\$ 322.95			
2808 Arkansas Ave	12/1-31/2013	Leticia U Anene	\$ 538.25			
2808 Arkansas Ave	12/1-31/2014	Leticia U Anene	\$ 1,311.18	\$ 9,844.59	\$ 9,844.59	\$ -
6518 Anderson St	5/21/2014	Maki-Tect	\$ 2,000.00			
3010 8th Ave N	5/21/2014	Maki-Tect	\$ 2,000.00			
2808 Arkansas Ave	6/16/2014	Maki-Tect	\$ 1,500.00	\$ 5,500.00	\$ 3,300.00	\$ (2,200.00)
3010 8th Ave N	4/10/2015	Norex Engineering	\$ 250.00			
6518 Anderson St	3/5/2015	Norex Engineering Inc.	\$ 1,200.00	\$ 1,450.00	\$ 1,450.00	\$ -
6518 Anderson St	11/3/2014	Office Depot Store	\$ 6.15			
6518 Anderson St	11/4/2014	Office Depot Store	\$ 7.58			
6518 Anderson St	6/9/2014	Office Depot Store	\$ 3.90			
6518 Anderson St	6/3/2014	Office Depot Store	\$ 2.06	\$ 19.69	\$ -	\$ (19.69)
2808 Arkansas Ave	6/24/2014	Racelectric Engineering	\$ 1,400.00	\$ 1,400.00	\$ 775.00	\$ (625.00)
6518 Anderson St	6/5/2014	South Texas Surveying Associates Inc	\$ 850.00			

Property	Invoice Date	Payee/Vendor	Supported Amount Per Invoice	Total Amount Per Vendor	Payment Verified Per Bank Statements/Check Carbons/Check Images	Total Unsupported Amount
6518 Anderson St	8/14/2014	South Texas Surveying Associates Inc	\$ 300.00			
6518 Anderson St	9/4/2014	South Texas Surveying Associates Inc	\$ 200.00			
2808 Arkansas Ave	6/11/2014	South Texas Surveying Associates Inc	\$ 850.00	\$ 2,200.00	\$ -	\$ (2,200.00)
6518 Anderson St	1/22/2014	Steward Title	\$ 200.00			
3010 8th Ave N	1/22/2014	Stewart Title	\$ 200.00			
2808 Arkansas Ave	3/6/2014	Stewart Title	\$ 200.00	\$ 600.00	\$ -	\$ (600.00)
3010 8th Ave N	9/9/2013	Survey 1 Inc. - proposal provided	\$ 150.00	\$ 150.00	\$ -	\$ (150.00)
3010 8th Ave N	8/19/2015	Thomas Printworks	\$ 21.65			
3010 8th Ave N	8/11/2015	Thomas Printworks	\$ 64.95	\$ 86.60	\$ 86.60	\$ -
			\$ 182,672.50	\$ 179,647.47	\$ 107,274.26	

Amount Verified/Paid	\$ 107,274.26
Less Amount Reimbursed	\$ 182,672.50
Total Unsupported Amount	<u><u> </u></u>



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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T. Tolbert Chisum
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J.B. Goodwin

February 9, 2016

(512) 475-4608
earnest.hunt@tdhca.state.tx.us

Mr. Ebenezer Anene
President
EBENZ. Inc.
Dickinson, TX 77539
Email: obia54@yahoo.com

RE: Follow-Up Report of [*Desk/On-Site*] Monitoring Review Conducted November 23, 2015
HOME HRA Contract No. 1001695; HOME HRA PWD Contract No. 1001696

Dear Mr. Anene:

The Texas Department of Housing and Community Affairs (the Department) issued a monitoring report on November 30, 2015 for the above mentioned contracts. A response to the report was received on December 29, 2015. The Department responded to that report January 26, 2016 with unresolved findings. The Department accepted support documentation from EBENZ, Inc. through February 5, 2016.

After careful review of the documentation submitted, it has been determined that an unresolved finding remains. The materials provided did not address the findings because the expenses incurred could not be tied to eligible activities on either of the above contracts. The attached report details the review of the documentation submitted and status of finding. Costs are disallowed in the amount of \$73,720.78 and must be repaid to the Department no later than February 26, 2016.

Failure to correct findings may lead to additional sanctions, including referral to the Department's Enforcement Committee.

If you have any questions or concerns regarding this review, please feel free to contact me at (512) 475-4608 or via email at earnest.hunt@tdhca.state.tx.us.

Sincerely,
EARNEST L. HUNT
Earnest L. Hunt
Director of Subrecipient Monitoring

ELH

cc: Jennifer Molinari, TDHCA Director of HOME



Finding 2: Ensure Costs Requested for Reimbursement Are Properly Supported - Unresolved

EBENZ, Inc. submitted documentation that failed to address all cost reimbursement issues noted. The Department is only able to reconcile \$102,195.02 in reimbursed costs using the provided support documentation. Reimbursed costs of \$73,720.78 remain unsupported and are disallowed.

Required Additional Corrective Action:

EBENZ, Inc. must submit a check payable to the Department in the amount of \$73,477.48 on or before February 26, 2016.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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April 6, 2016

Writer's direct dial 512.475.1762
Email brooke.boston@tdhca.state.tx.us

Mr. Ebenezer Anene
President
EBENZ, Inc.
Dickinson, Texas
Sent to: obia54@yahoo.com

RE: COMPLIANCE COMMITTEE MEETING FOR FINDINGS ASSOCIATED WITH THE MONITORING REVIEW CONDUCTED ON NOVEMBER 23, 2015 FOR HOME HRA CONTRACT NO. 1001695 AND HOME HRA PWD CONTRACT NO. 1001696

Dear Mr. Anene:

In response to your request of March 21, 2016, the Compliance Committee of the Texas Department of Housing and Community Affairs (the "Committee") met with you regarding the above referenced monitoring findings on April 5, 2016, to consider whether the findings and identification of disallowed costs were appropriately determined by Compliance staff.

Thank you for providing your perspective on the issue. In your presentation, you indicated that the addresses covered in the monitoring were unclear to you, that you had not been told which three addresses you were expected to provide documentation for, and that you may have provided additional documentation had you known the addresses. The Committee looked into this comment after your departure and determined that the specific contract numbers and activities – and the three specific addresses – were clearly denoted in the desk review notification you received from Earnest Hunt on October 20, 2015. (*See attached*). Subsequent communication continued to indicate the addresses associated with specific findings. Knowing the addresses under review from the inception of the review, the Committee believes that you have had ample opportunity to provide any added invoices or evidence.

You also suggested that you had not been provided a specific breakdown of the final amount of disallowed costs, and that had you received this detail you may have provided evidence and backup for those items. I would note that in the email communication to you of February 2, 2016, from Earnest Hunt, a spreadsheet was attached that clearly outlined the disallowed costs by activity and address. (*See attached*) After February 2, 2016, Compliance staff received additional support for \$1,677.46 in costs, reducing the disallowed costs to \$73,720.78.



The Committee, in meeting with you, initially considered having you again work with Compliance Staff so that you could provide further documentation, but after further review the Committee does not believe further review by Compliance is merited because the documentation provided to you by Earnest Hunt contradicts the statements you made to the Committee. The Committee cannot conclude that Compliance staff has not appropriately interpreted and applied the rules and that the finding in question and associated disallowed costs were appropriately identified.

Please note that as provided for by Chapter 10 Texas Administrative Code, §20.15(l)(4)(D), "If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed in accordance with appeal rights described in Chapter 1 of this Title." In accordance with Chapter 10 Texas Administrative Code, §1.7(c), you may appeal this committee's decision to the Executive Director. You must file a written appeal with the Department for the Executive Director not later than the seventh day after this notice has been provided to you which means it must be received by April 13, 2016. Should you wish to pursue such an appeal, please let me know.

If you have any questions, please contact me at the number provided above.

Sincerely,

Brooke Boston

Brooke Boston
Deputy Executive Director
& Compliance Committee Chair



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J.B. Goodwin

April 19, 2016

Writer's direct dial: 512.475.3296
Email: sim.irvine@tdhca.state.tx.us

Ebenezer Anene, President
Ebenz Inc.
12376 Newbrook Drive
Houston, Texas 77072
ebenzinc@yahoo.com

RE: APPEAL OF DISALLOWED COSTS UNDER THE HOME PROGRAM

Dear Mr. Anene:

The Texas Department of Housing and Community Affairs (the "Department") is in receipt of your April 11, 2016, letter appeal to the Department's Governing Board of the staff determination of disallowed costs. Procedurally, the Department's rules provide that appeals are first to the Executive Director. If the Executive Director denies the appeal or fails to act on the appeal by a specified date, then there are rights of appeal to the Governing Board. Although you have not followed the protocol in the rule, I am denying the appeal as described more fully herein and am placing this on the agenda for the Department's Governing Board meeting on April 28, 2016.

Your appeal stated as follows:

"TDHCA had the understanding that the services of the listed vendors and County to name a few were rendered and paid for:

- *A&E Graphics (Must have their payments prior to leaving the print shop)*
- *Galveston County Clerk (Payment must be made prior to recording)*
- *Dwight D Sullivan-Galveston County Clerk (Payment must be made prior to recording)*
- *South Texas Surveying Association (Cannot release survey without payment)*
- *Stewart Title (Would not accept checks - All Title search must be paid for prior to search)*

"Why were the submitted receipts of the above paid vendors and county office disallowed?"

Through draw requests you were reimbursed for \$59.54 paid to A&E Graphics. Although it took several requests, you eventually provided bank statements documenting payment of \$59.54 to A&E



Graphics. The Department's records show that you have been reimbursed for all amounts for A&E Graphics which you have submitted through the Department's draw system.

Through draw requests you were paid out \$120.00 for Dwight Sullivan County Clerk. Department staff has requested documentation to support that you used the \$120.00 to pay Dwight Sullivan County Clerk. The only documentation you have provided is a receipt showing \$38.00 was paid by a VISA in November of 2014. If this is a debit card, this amount is not reflected on the November 2014 bank statement provided. If this is a charge card, no VISA statement for proof of payment has been provided. As of this time you have not provided documentation for the remaining amounts you were reimbursed.

Through draw requests you were paid out \$477.30 to Galveston County. We have requested documentation to show that you used the \$477.30 to pay Galveston County. An invoice for \$123.30 was submitted and paid out twice. You have provided documentation showing you have paid Galveston County a total of \$196.00. You have provided a receipt showing payment of \$38.00 was paid by a VISA in December of 2014. If this is a debit card, this amount is not reflected on the December 2014 bank statement provided. If this is a charge card, no VISA statement for proof of payment has been provided. You have not provided documentation for the remaining amounts you were reimbursed.

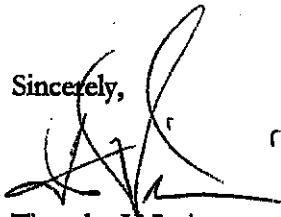
Through draw requests you were paid out \$2200.00 to South Texas Surveying Associates. We have requested documentation to show that you used the \$2200.00 to pay South Texas Surveying Associates. You have provided documentation showing that you paid South Texas Surveying Associates \$1350. The Department is able to reconcile that payment amount with the bank statements you have provided. You have not provided documentation for the remaining \$850.00 which you have been paid.

Through draw requests you were paid out \$600.00 to Stewart Title. We have requested documentation to show that you used the \$600.00 to pay Stewart Title. You have not provided documentation showing any payment to Stewart Title.

You have been provided multiple opportunities to document that you used the money the Department provided for program purposes. Although these three homes were constructed and are now occupied by eligible households, you have failed to maintain records required by federal regulations (24 CFR §84.21) and OMB Circular A-122.

In summary I find that staff has acted properly in determining disallowed costs based on your failure to provide the documentation required by applicable federal regulations, your contracts, and the Department's rules.

Your request is denied and your appeal will be considered by the Department's Governing Board at its April 28, 2016, meeting. If you have any questions, please contact Patricia Murphy at patricia.murphy@tdhca.state.tx.us.

Sincerely,

Timothy K. Irvine
Executive Director

6

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action on the Award of contracts to administer the U.S. Department of Energy (“DOE”) and Low Income Home Energy Assistance Program (“LIHEAP”) Weatherization Assistance Program (“WAP”) to Greater East Texas Community Action Program (“GETCAP”) to provide services in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties.

RECOMMENDED ACTION

WHEREAS, pursuant to Texas Government Code, §§2306.053, .092, and .097, the Texas Department of Housing and Community Affairs (the “Department”) is provided the authority to administer the WAP;

WHEREAS, the Department administers the WAP through weatherization funds from DOE and LIHEAP funds from the U.S. Department of Health and Human Services;

WHEREAS, due to the voluntary relinquishment of its WAP by Tri-County Community Action, Inc., there is no existing weatherization provider in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties;

WHEREAS, on November 12, 2015, the Department received authorization from this Board to release a Request for Applications (“RFA”) in cases in which program coverage is not in place;

WHEREAS, on March 29, 2016, the Department released an RFA and received one qualifying response by the April 15, 2016, deadline; and

WHEREAS, GETCAP is a qualifying respondent and has satisfied the threshold requirements and Previous Participation Review, and GETCAP’s award was approved by the Executive Award Review and Advisory Committee (“EARAC”) in accordance with 10 TAC Chapter 1, Subchapter C on April 18, 2016;

NOW, therefore, it is hereby

RESOLVED, that Greater East Texas Community Action Program is awarded 2016 LIHEAP and 2016 DOE WAP funds for Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties, in the amounts shown in Exhibit A and

FURTHER RESOLVED, that the entity awarded these funds through this action shall be the designated network provider to receive WAP funds for the associated county(ies) until such time that the designation requires review.

BACKGROUND

On August 1, 2015, Tri-County Community Action, Inc., voluntarily relinquished its weatherization programs in Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, and Upshur counties.

At the Board meeting of November 12, 2015, the Board provided broad authorization to staff to release a RFA and enter into agreements with one or more entities to administer any one or more of the CSBG, LIHEAP, or DOE WAP programs for the benefit of providing continued services to eligible low-income households in a service area whenever it deems such action necessary or advisable to address a possible loss of services in an area of the state under one or more these programs.

The RFA, issued on March 29, 2016, encouraged applicant organizations to apply for all of the counties in the service area and required that applicants apply for both programs jointly. The application deadline was April 15, 2016. Staff received one application from GETCAP which was reviewed and found to satisfy the required threshold requirements; GETCAP's award was also reviewed and approved by the Executive Award Review and Advisory Committee ("EARAC") in accordance with 10 TAC Chapter 1, Subchapter C.

Exhibit A

2016 DOE WAP Allocation:

County	Estimated Allocation (\$)
Harrison	10,707
Jasper	9,497
Newton	5,236
Panola	6,159
Sabine	5,747
San Augustine	8,125
Shelby	9,964
Tyler	7,043
Upshur	6,373
TOTAL	\$68,851

2016 LIHEAP WAP Allocation:

County	Estimated Allocation (\$)
Harrison	40,819
Jasper	36,208
Newton	19,960
Panola	23,483
Sabine	21,911
San Augustine	30,977
Shelby	37,986
Tyler	26,853
Upshur	24,297
TOTAL	\$262,494

7a

BOARD ACTION ITEM
MULTIFAMILY FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action on Timely Filed Appeals and Waivers under the Department's Multifamily Program Rules

RECOMMENDED ACTION

WHEREAS, a Competitive Housing Tax Credit application for Crosby Meadows Apartments was submitted to the Department by the Full Application Delivery Date;

WHEREAS, a 2016 Competitive Housing Tax Credit scoring notice was provided to the Applicant on April 7, 2016;

WHEREAS, the Applicant self identified as being located in a rural area even though the property is outside the Census Designated Area ("CDA") known as Crosby and within the Extraterritorial Jurisdiction ("ETJ") of the City of Houston;

WHEREAS, staff identified points that the Applicant elected but that the Application would not, as an urban application, qualify to receive under 10 TAC §11.9 (c)(1) Income Levels of Tenants, (c)(2) Rent Levels of Tenants, (c)(4) Opportunity Index, (c)(5) Educational Excellence, (c)(6) Underserved Area, and (e)(3) Pre-Application Participation;

WHEREAS, the Applicant timely filed an appeal; and

WHEREAS, the Executive Director has engaged staff in re-consideration of the appeal and recommends approval of the appeal for the reason that the actual location of the proposed development, although characterized as "Crosby," is outside of the CDA known as Crosby and is in an area that should have been identified as rural, being within a political subdivision having a population of less than 25,000 and sharing no boundary with an urban area, as specified in TEX. GOV'T CODE §2306.004 (28-a);

NOW, therefore, it is hereby

RESOLVED, the Applicant's appeal of the scoring notice for Crosby Meadows Apartments (#16175) is hereby approved.

BACKGROUND

The Crosby Meadows Apartments – located outside of the boundary of the Census Designated Place "Crosby" and in the ETJ of the City of Houston in Harris County – was denied points in the aforementioned selection criteria because the Applicant self scored the Application as though it were in a Rural Area when it is not according to §10.204(5)(A) Designation as Rural or Urban. The Rule describes sites in the ETJ of an Urban Area as Urban, without consideration for the actual characteristics of the individual site.

In the appeal, the Applicant contends that they relied on legislation (HB 429) passed by the 83rd Texas Legislature which they believed specifically grandfathered all USDA properties as Rural, thus, the Applicant's designation as Rural is supported by the law, and denial of the Rural Designation by the Department is not justified. In researching the appeal, staff has determined that a term in the statute is undefined, but that a reasonable interpretation would allow for the statute to support a Rural designation for the site described in this Application.

Staff's research of the issue included a review of the legislation and of how the legislation was incorporated as statute into Chapter 2306 of the Texas Government Code, and how the statute was interpreted in the Department's Rules. During this review, staff found reason to believe that the designation as Rural is an appropriate designation for the area in which the Development site is proposed.

A Rural Area is defined in TEX. GOV'T CODE §2306.004(28-a) as

an area that is located:

- (A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or
- (B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area.

Though the term "statistical area" could be read to refer to a primary metropolitan statistical area ("PMSA") or metropolitan statistical area ("MSA") doing so would render that sentence inconsequential since all PMSA and MSA by definition have a population of at least 50,000. A statistical area is an undefined term. The 2015 addition to the TEX. GOV'T CODE §2306.6740 (Designation of Certain Areas as Rural) refers both census-designated places or political subdivision as areas that can choose to self identify as rural. In the case of the Crosby Apartments, the obvious political subdivision would be the City of Houston or Harris County, neither of which will meet criteria for designation as Rural. This was the basis for staff's initial determination. However, Municipal Utility Districts ("MUD"), Emergency Service Districts ("ESD") and Independent School Districts ("ISD") are each a political subdivision within the meaning of the Local Government Code, and the Crosby site is contained within the Crosby MUD, the Crosby ESD and the Crosby ISD. Staff recommends based on this analysis that the Crosby MUD be considered Rural. If the Board concurs the Crosby Apartments application can move forward as presented. Staff now considers the proposed Development Site is in that area that meets item (B) above and recommends that the appeal be granted.

Staff will work to refine the Rule regarding Rural and Urban designations within ETJs for the 2017 Multifamily Uniform Rules, in order to bring more clarity to this issue.

7b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action regarding an Award of Direct Loan funds from the 2016-1 Multifamily Direct Loan Notice of Funding Availability

RECOMMENDED ACTION

WHEREAS, the Department has received a total of twenty-six applications for Multifamily Direct Loan funds under the 2016-1 Multifamily Direct Loan Notice of Funding Availability (“NOFA”);

WHEREAS, \$607,698 in Direct Loan funds under the Deferred Forgivable Loan Set-Aside (“Set-Aside”) have been awarded under the NOFA to date and up to \$2,392,302 remains available under the Set-Aside to award to eligible applications; and,

WHEREAS, an Application #16500 requesting \$590,000 in Direct Loan funds for Bluebonnet Studios is a First Priority development that has received complete reviews for compliance with program and underwriting requirements;

NOW, therefore, it is hereby

RESOLVED, that an award of \$590,000 in Direct Loan funds from the NOFA for Bluebonnet Studios is hereby approved in the form presented at this meeting and

FURTHER RESOLVED, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting and completion of any other reviews required to assure compliance with the applicable rules and requirements.

BACKGROUND

On November 12, 2015, the Board approved the 2016-1 Multifamily Direct Loan NOFA with \$23,109,096 in funds (up to \$3,000,000 in the Deferred Forgivable Loan Set-Aside, \$4,000,000 in the 4% Housing Tax Credit-Layered New Construction Set Aside, \$3,236,344 in the CHDO Set-Aside, and \$12,872,752 in the General Set-Aside). At the February 25, 2016, Board Meeting, \$607,698 in Direct Loan funds under the Deferred Forgivable Loan Set-Aside was awarded to an application (16405) under the NOFA.

Staff is recommending the Board’s approval of Bluebonnet Studios application (16500) for Direct Loan funds totaling \$590,000 under the Deferred Forgivable Loan Set-Aside. The recommended applications and award amounts are outlined in the attached award recommendations log.

Bluebonnet Studios was awarded an allocation of 9% Housing Tax Credits (“HTC”) in July 2014 for application 14068, which proposed new construction of 107 supportive housing units at 2301 South

Lamar Boulevard in Austin. Construction began on this project in June 2015 and is currently over 60% complete. Building costs have increased \$7.7 million (313%) since the 9% HTC application was underwritten by the Department in July 2014. This increase has led the Applicant to secure additional financing in the forms of grants, donations, and increased equity. While building costs have increased substantially, the Applicant has not increased the developer fee based on the higher costs. Therefore, none of the Direct Loan funds will be used to fund an increased developer fee. The Direct Loan funds will be used to help fill the gap between sources and increased building costs and will be awarded as a deferred forgivable loan with a 30-year term. With the addition of Direct Loan funds, 11 of the 107 units will now also be restricted under a separate Land Use Restriction Agreement. The 11 Direct Loan units will target households earning 50% or less of the Area Median Income. Construction is expected to be completed later this year.

As required in section 4 of the 2016-1 NOFA, the Department's Governing Board must establish a hard closing deadline at the time of award. As such, staff recommends that closing on all sources of funds must occur no later than June 30, 2016. In the event that TCAP Repayment Funds are utilized for this transaction, the Department may require that the development be subject to some or all HOME requirements in 24 CFR Part 92.

This application has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

Should the recommended award be approved, \$21,911,398 will remain available under the NOFA with \$1,802,302 under the Deferred Forgivable Loan Set-Aside, of which, applications requesting \$2,510,000, are still under review. Subsequent award recommendations for applications undergoing staff reviews may appear on future Board agendas.

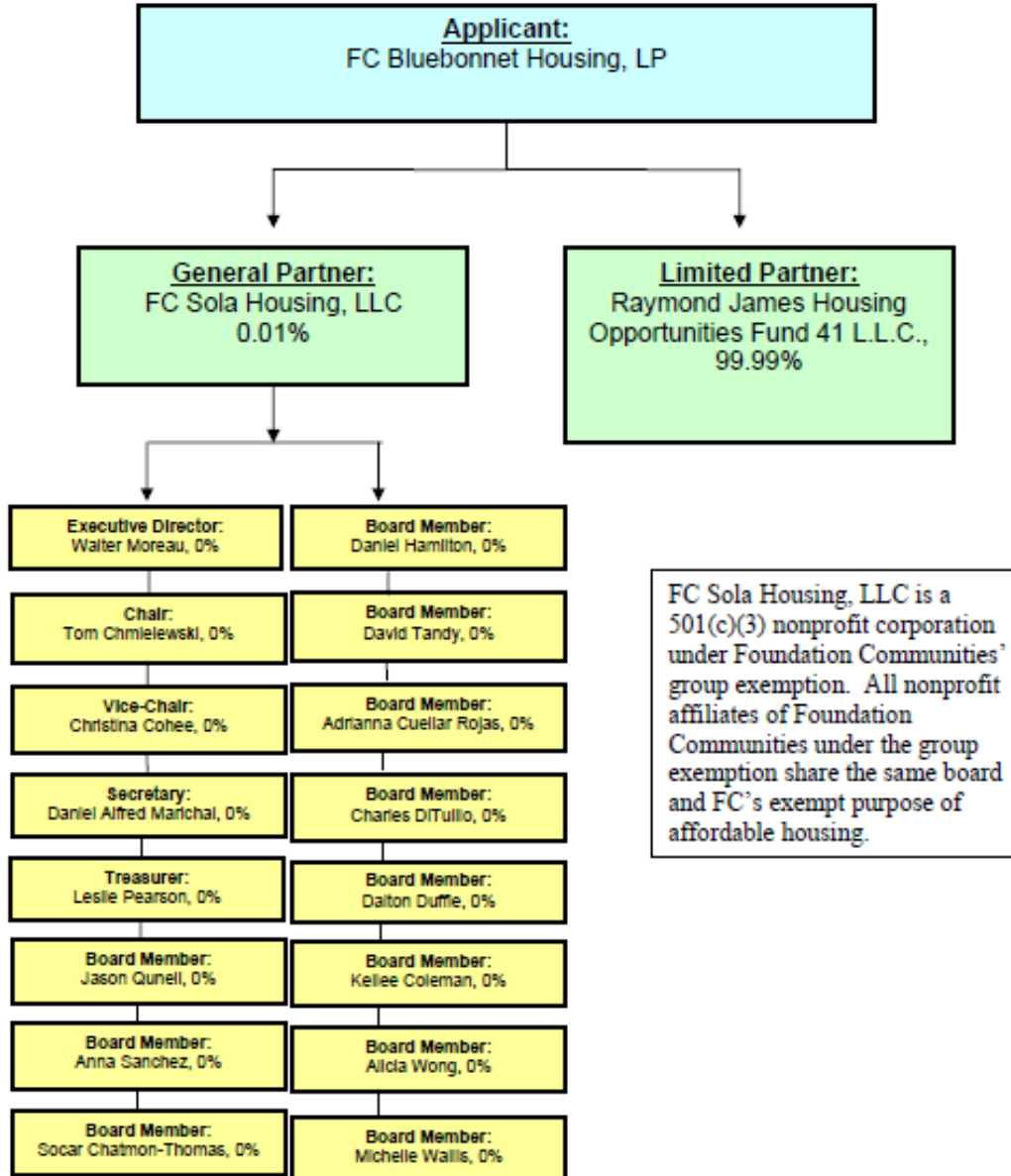
The Application and Award Recommendations Log is attached.

Organizational Structure and Previous Participation: The borrower is FC Bluebonnet Housing, LP and includes entities and principals as indicated in the organization chart below. At the time of the Previous Participation Review, the applicant was a Category 3 portfolio because of an uncorrected event of noncompliance. The issue has since been corrected and EARAC recommends approval without further comment.

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

**Pt 5 Tab 37 – Applicant and Developer Ownership Charts
BLUEBONNET STUDIOS - AUSTIN, TEXAS**

Ownership Chart



FC Sola Housing, LLC is a 501(c)(3) nonprofit corporation under Foundation Communities' group exemption. All nonprofit affiliates of Foundation Communities under the group exemption share the same board and FC's exempt purpose of affordable housing.



2016-1 Multifamily Direct Loan Program - Application Log - April 19, 2016
Applications submitted under 2016-1 Multifamily Direct Loan Notice of Funding Availability published in the Texas Register on 12/25/2015

The following data was compiled using information submitted by each applicant. While this data has been reviewed or verified by the Department, errors may still be present. Those reviewing the log are advised to use caution in reaching any definitive conclusions based on this information alone. Applicants are encouraged to review 10 TAC §111.1(b) and 10.2(b) concerning Due Diligence and Applicant Responsibility. This log will be updated periodically as staff completes application reviews and as more applications are received. Applicants that identify an error in the log should contact Andrew Sinnott at andrew.sinnott@tdhca.state.tx.us as soon as possible. Identification of an error early does not guarantee that the error can be addressed administratively.

Applications sorted by date received.

Deferred Forgivable Loan													Total Set Aside Funding Level: \$3,000,000
TDHCA Application #	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16500	Bluebonnett Studios	Austin	Travis	7	NC	\$ 590,000	\$ 590,000	Supportive Housing	107	11	9%	1/4/2016	Recommended for award 4/28/16
16501	Garden Terrace Phase III	Austin	Travis	7	NC	\$ 1,000,000		Supportive Housing	20	20		1/4/2016	Direct Loan is only source of Department funding
16405	New Hope Housing at Harrisburg	Houston	Harris	6	NC	\$ 607,698	\$ 607,698	Supportive Housing	175	11	4%	1/4/2016	Recommended for award 2/25/16
16406	New Hope Housing at Reed	Houston	Harris	6	NC	\$ 660,000		Supportive Housing	187	11	4%	1/4/2016	
16503	Works at Pleasant Valley Phase II	Austin	Travis	7	NC	\$ 850,000		Supportive Housing	29	29		1/5/2016	Direct Loan is only source of Department funding
Total Deferred Forgivable Loan Amount Requested / Recommended						\$ 3,707,698	\$ 1,197,698	Total Units	518	82			

CHDO (HOME funds only)													Total Set Aside Funding Level: \$3,236,344
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16196	Merritt Starlight	Wimberley	Hays	7	NC	\$ 2,000,000		Elderly Limitation	80	34	9%	4/1/2016	
16185	Merritt Heritage	Georgetown	Williamson	7	NC	\$ 2,000,000		Elderly Limitation	244	34	9%	4/1/2016	
16210	Merritt Monument	Midland	Midland	12	NC	\$ 2,000,000		General	104	34	9%	4/1/2016	
16505	Blakemoor Manor	Kaufman	Kaufman	3	NC	\$ 2,000,000		Elderly Limitation	80	34		4/4/2016	Direct Loan is only source of Department funding
Total CHDO Amount Requested / Recommended						\$ 8,000,000		Total Units	508	136			

4% HTC Layered New Construction													Total Set Aside Funding Level: \$4,000,000
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16400	Acme Road Apartments	San Antonio	Bexar	9	NC	\$ 2,000,000		General	324	28	4%	1/19/2016	
16408	Broadmoor Apartments	Fort Worth	Tarrant	3	NC	\$ 2,000,000		General	324	35	4%	2/4/2016	
Total 4% HTC Layered New Construction Amount Requested / Recommended						\$ 4,000,000		Total Units	648	63			

General													Total Set Aside Funding Level: \$12,872,752
TDHCA#	Property Name	Property City	Property County	Region	Housing Activity ¹	Multifamily Direct Loan Request	Underwritten/Recommended Amount	Target Population	Total Units	MF Direct Loan Units	Layering ²	Date Received ³	Comments
16403	Cross Creek Apartments	Austin	Travis	7	R	\$ 1,000,000		General	200	20	4%	2/9/2016	
16502	Freedoms Path at Kerrville	Kerrville	Kerr	9	NC	\$ 980,000		Supportive Housing	49	13	9%	3/4/2016	Previously received 9% allocation for application #13167
16504	Gaston Place Accessible Apartments	Austin	Travis	7	NC	\$ 1,050,000		General	27	27		3/30/2016	Direct Loan is only source of Department funding
16108	Timber Ridge Apartments	Chandler	Henderson	4	R	\$ 500,000		Elderly Preference	44	13	9%	4/1/2016	
16113	The Village at Main	Bullard	Smith	4	R	\$ 500,000		General	24	7	9%	4/1/2016	
16116	The Cottages at Main	Bullard	Smith	4	R	\$ 500,000		Elderly Preference	24	7	9%	4/1/2016	
16213	Villas on Flint	Wolfforth	Lubbock	1	NC	\$ 1,000,000		Elderly Limitation	60	17	9%	4/1/2016	
16319	The Residence at Coulter	Amarillo	Randall	1	NC	\$ 975,000		Elderly Limitation	119	11	9%	4/1/2016	
16322	The Residence at Autumn Sage	Abilene	Taylor	2	NC	\$ 1,025,000		Elderly Limitation	35	11	9%	4/1/2016	
16011	Homestead Prairie Senior Apartments	Ponder	Denton	3	NC	\$ 1,000,000		Elderly Limitation	53	14	9%	4/1/2016	
16260	Churchill at Golden Triangle Community	Fort Worth	Tarrant	3	NC	\$ 1,500,000		General	118	15	9%	4/1/2016	
16184	Reserve at Hagan	Whitehouse	Smith	4	NC	\$ 1,000,000		General	72	9	9%	4/1/2016	
16169	Havens of Hutto	Hutto	Williamson	7	NC	\$ 1,550,000		Elderly Limitation	70	16	9%	4/1/2016	
16115	The Reserve at Dry Creek	Hewitt	McLennan	8	NC	\$ 1,000,000		Elderly Limitation	113	18	9%	4/1/2016	
16164	Saralita Senior Village	Kerrville	Kerr	9	NC	\$ 1,140,000		Elderly Limitation	36	16	9%	4/14/2016	
Total General Amount Requested / Recommended						\$ 14,720,000		Total Units	1,044	214			

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

2 = Layering of Other Department Funds: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program

3 = Date Received: The date that the application, all required 3rd Party Reports, Application Fees (if applicable), and Certificate of Reservation (if applicable) were received.

7c

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16401 George W. Baines Apartments, El Paso)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for George W. Baines Apartments, sponsored by the Housing Authority of the City of El Paso, was submitted to the Department on January 14, 2016;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on March 28, 2016, and will expire on August 25, 2016;

WHEREAS, the proposed issuer of the bonds is the Alamito Public Facilities Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain undesirable characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of an undesirable neighborhood characteristic, specifically that the development site is within the American Society for Testing and Materials (“ASTM”) Standard search distance of a Resource Conservation and Recovery Act (“RCRA”) generator of hazardous waste as further noted in the Environmental Site Assessment (“ESA”);

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Portfolio Category 4 and the Applicant was required to propose terms and conditions specific to their compliance history along with identifying specific dates to correct uncorrected events;

WHEREAS, all parties understand and agree that failure to meet these conditions and provide evidence of compliance with these conditions upon request may result in a negative recommendation for future awards and/or ownership transfer requests; and

WHEREAS, the Department’s expectation for owners and asset managers and property managers with Texas properties funded by or through the Department to have knowledge of the TDHCA compliance requirements for the property augmented by the attendance of TDHCA sponsored compliance training;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$211,973 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for George W. Baines Apartments is hereby approved as presented to this meeting conditioned upon the following:

1. The uncorrected accessibility violations at Eastside Crossing property (#12152) will be corrected by August 16, 2016.
2. The Housing Authority of the City of El Paso ("HACEP") agrees to have a *de novo* qualified third party accessibility specialist review all architectural plans to confirm compliance with TDHCA accessibility standards for all pending TDHCA awarded developments, which includes all developments that have been approved but have not yet submitted cost certification and for all applications submitted for consideration through December 31, 2018.
3. Appropriate staff of HACEP will each attend 20 hours of ADA accessibility training and provide the Department staff with evidence of completion by December 31, 2016.
4. Upper management including the Executive team and appropriate staff of HACEP will participate in 8 hours of Fair Housing Training and provide the Department staff with evidence of completion by December 31, 2016.
5. Upper management and appropriate staff of HACEP will promptly enroll with the TDHCA Listserv and appropriate personnel will attend compliance related roundtables and trainings and will provide to TDHCA by June 1, 2016, a schedule of each and all employees attending TDHCA trainings and opportunities in the past year and projected to attend through the December 31, 2016.
6. HACEP will conduct appropriate due diligence to determine all compliance requirements prior to future acquisition of TDHCA administered property and not rely upon post closing rule waivers or material amendments to address inconsistencies or required amendments.
7. All appropriate staff of Hunt and Alden Torch with responsibility over TDHCA administered property will promptly enroll with the TDHCA Listserv, and appropriate personnel will attend compliance related roundtables and trainings and Hunt and Alden Torch will provide to TDHCA by June 1, 2016, a schedule of each and all employees attending TDHCA trainings and opportunities in the past year and projected to attend through the December 31, 2016.
8. Hunt and Alden Torch will conduct appropriate due diligence to determine all compliance requirements prior to future acquisition of TDHCA administered property and not rely upon post closing rule waivers or material amendments to address inconsistencies or required amendments.

BACKGROUND

General Information: George W. Baines Apartments is located at 10661 Vista Del Sol Drive, El Paso, El Paso County and consists of 58 units, all of which will be rent and income restricted at 60% AMFI. The units are currently occupied and operating as public housing and are owned and managed by the Housing Authority of the City of El Paso. The subject property, as well as a sister property also on the agenda for consideration today, the Charles R. Morehead Apartments, will be converted through HUD's Rental Assistance Demonstration program. While these properties will be structured under a common financing plan, each will have a separate Housing Tax Credit Land Use Restriction Agreement. The development will serve an elderly preference population and conforms to current zoning. Fifty of the 58 units were constructed in 1982 and the remaining eight units for the additional two duplexes were added to the property in 2006. The census tract (0043.12) has a median household income of \$33,633, is in the third quartile and has a poverty rate of 21%.

Site Analysis: The applicant disclosed the presence of an undesirable site characteristic under §10.101(a)(4)(B)(v) of the Uniform Multifamily Rules which requires additional site analysis; specifically, the ESA for the development site indicates an RCRA facility listing within the ASTM-required search distances from the approximate boundaries the site.

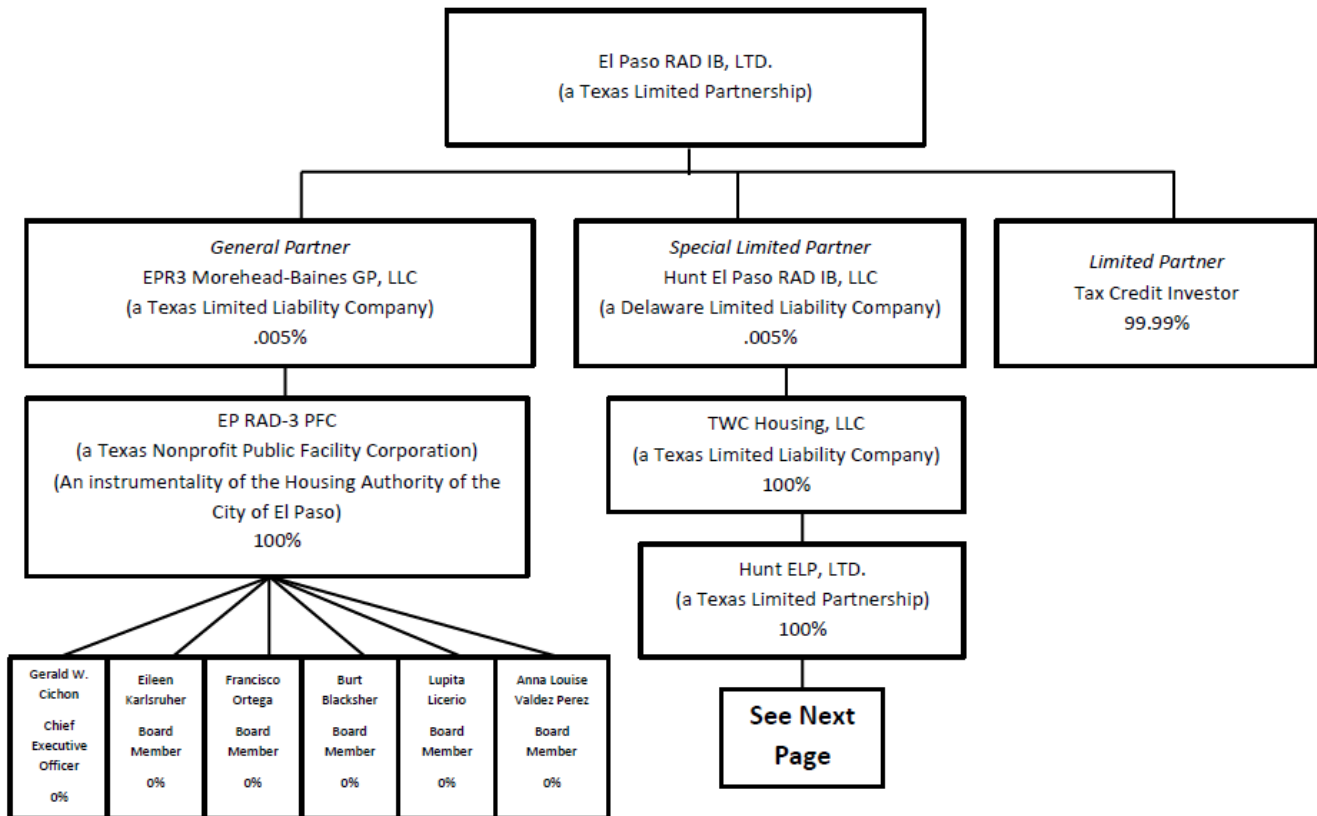
The ESA indicated the RCRA generator of hazardous waste facility is not located on the development site or adjacent to the site, but is within a 0.25 mile radius of the proposed development. The entity of record for the ASTM search distance is a Wal-Mart and is coded as RCRA-CESQG which stands for Conditionally Exempt Small Quantity Generator and indicates the facility generates no more than 220 lbs of hazardous waste per month. This designation requires compliance with several basic waste management requirements to remain exempt from the full hazardous waste regulations that apply to generators of large quantities of waste. The ESA noted that the vicinity of the RCRA generator is topographically cross-gradient of the proposed development, and in their professional opinion is not of environmental concern to the development. The ESA provider did not recommend additional assessments or diligence that would need to be performed due to the RCRA generator and as such staff does not believe the disclosure relative to the RCRA facility requires additional review and recommends the site be found eligible. Moreover, §10.101(a)(4) allows consideration for acceptable mitigation regarding this characteristic based on the preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions. Currently, 100% of the units at George Baines are public housing units under Section 9. It is also worth noting that the scope of work planned for this development involves approximately \$45,000 per unit in rehabilitation costs which far exceeds the minimum threshold in the rule of \$25,000 per unit.

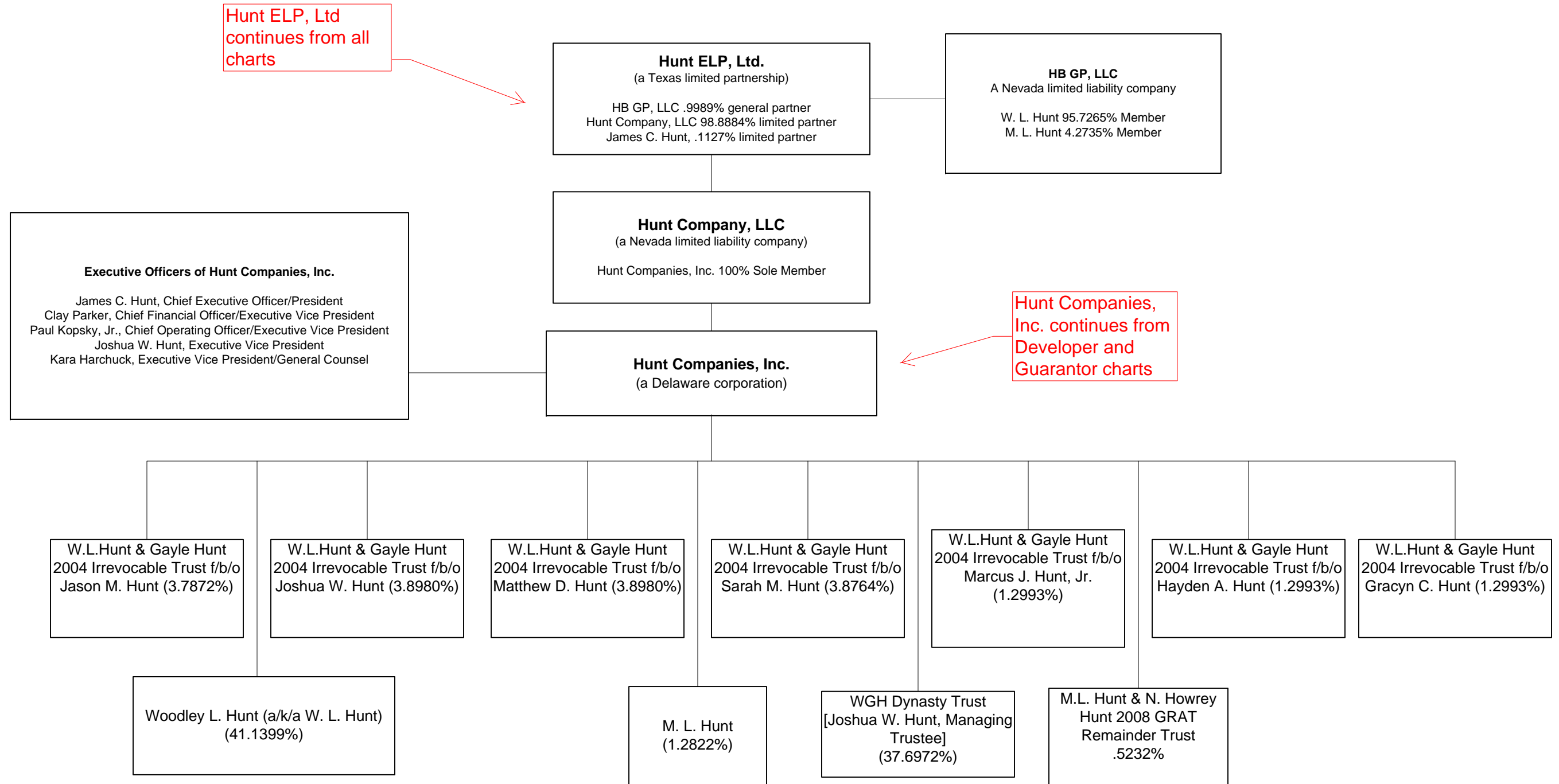
Organizational Structure: The Borrower is El Paso RAD 1B, LTD. and includes the entities and principals as indicated in the organization chart below. The EARAC met on April 18, 2016 and subsequently on April 21, 2016, and considered the previous participation review documentation associated with the application in addition to the information provided by the applicant in response to the review. In accordance with 10 TAC §1.301(d)(1), the compliance history was designated as an Extra Large Portfolio Category 4, which reads as follows in the rule:

“(4) Category 4. Applications will be notified of their status and if they wish to pursue the award should be prepared to propose terms and conditions specific to their compliance history, along with identifying specific dates to correct uncorrected events. EARAC may accept, modify or reject the applicant's proposal. If the proposal is modified or rejected, the applicant may appeal in accordance with §1.304 of this subchapter.”

EARAC met with the applicant and members of the development team on April 19, 2016, and in response to the meeting and information provided by the applicant EARAC recommends approval of the application conditioned upon those items noted herein, as modified by staff.

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





Hunt ELP, Ltd
continues from all
charts

Hunt Companies,
Inc. continues from
Developer and
Guarantor charts

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 28 2016

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer (#16402 Charles R. Morehead, El Paso)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Charles R. Morehead Apartments was submitted to the Department on January 14, 2016;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on March 28, 2016, and will expire on August 25, 2016;

WHEREAS, the proposed issuer of the bonds is the Alamito Public Facilities Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain undesirable characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of such undesirable neighborhood characteristics, specifically those relating to the poverty rate, school attendance zones and facility listings within the American Society for Testing and Materials (“ASTM”) required search distances from the boundaries of the site(s);

WHEREAS, staff has conducted a further review of the proposed development sites and surrounding neighborhood and recommends the proposed sites be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Portfolio Category 4 and the Applicant was required to propose terms and conditions specific to their compliance history along with identifying specific dates to correct uncorrected events;

WHEREAS, all parties understand and agree that failure to meet these conditions and provide evidence of compliance with these conditions upon request may result in a negative recommendation for future awards and/or ownership transfer requests; and

WHEREAS, the Department’s expectation for owners and asset managers and property managers with Texas properties funded by or through the Department to have knowledge of the TDHCA compliance requirements for the property augmented by the attendance of TDHCA sponsored compliance training;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$336,831 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Charles R. Morehead Apartments is hereby approved as presented to this meeting conditioned upon the following:

1. The uncorrected accessibility violations at Eastside Crossing property (#12152) will be corrected by August 16, 2016.
2. The Housing Authority of the City of El Paso ("HACEP") agrees to have a *de novo* qualified third party accessibility specialist review all architectural plans to confirm compliance with TDHCA accessibility standards for all pending TDHCA awarded developments, which includes all developments that have been approved but have not yet submitted cost certification and for all applications submitted for consideration through December 31, 2018.
3. Appropriate staff of HACEP will each attend 20 hours of ADA accessibility training and provide the Department staff with evidence of completion by December 31, 2016.
4. Upper management including the Executive team and appropriate staff of HACEP will participate in 8 hours of Fair Housing Training and provide the Department staff with evidence of completion by December 31, 2016.
5. Upper management and appropriate staff of HACEP will promptly enroll with the TDHCA Listserv and appropriate personnel will attend compliance related roundtables and trainings and will provide to TDHCA by June 1, 2016, a schedule of each and all employees attending TDHCA trainings and opportunities in the past year and projected to attend through the December 31, 2016.
6. HACEP will conduct appropriate due diligence to determine all compliance requirements prior to future acquisition of TDHCA administered property and not rely upon post closing rule waivers or material amendments to address inconsistencies or required amendments.
7. All appropriate staff of Hunt and Alden Torch with responsibility over TDHCA administered property will promptly enroll with the TDHCA Listserv, and appropriate personnel will attend compliance related roundtables and trainings and Hunt and Alden Torch will provide to TDHCA by June 1, 2016, a schedule of each and all employees attending TDHCA trainings and opportunities in the past year and projected to attend through the December 31, 2016.
8. Hunt and Alden Torch will conduct appropriate due diligence to determine all compliance requirements prior to future acquisition of TDHCA administered property and not rely upon post closing rule waivers or material amendments to address inconsistencies or required amendments.
9. The Charles R. Morehead property (#16402) will provide common amenities to support the minimum four point threshold requirement for each individual site.

BACKGROUND

General Information: Charles R. Morehead Apartments consists of twelve multiple sites located near 6th and Park, specifically 701, 707, 709, 711, 721 and 801 Park, 1206 E. Father Rahm, 1007 and 1009 St. Vrain, 801 Hills, 620 Kansas, and 615 S. Campbell, El Paso, El Paso County, and comprises 62 units, all of which will be rent and income restricted at 60% AMFI. The units are currently occupied and operating as public

housing and are owned and managed by the Housing Authority of the City of El Paso. The subject property, as well as a sister property also on the agenda for consideration today, the George W. Baines Apartments, will be converted through HUD's Rental Assistance Demonstration program. While these properties will be structured under a common financing plan, Charles R. Morehead and George W. Baines Apartments will have separate Housing Tax Credit Land Use Restriction Agreements. The development, originally constructed in 1984, will serve the general population and conforms to current zoning.

During the review process, the location of the common amenities was examined considering the fact that this development includes multiple sites with no community building. The applicant indicated, in response to the concerns raised, that each site in the development was going to include the following amenities in order to meet the four-point threshold: barbecue grills and tables, bicycle racks, and green building features. It should be noted that one of the sites, Father Rahm, which is across the street from another site in the development, will be sharing the barbecue grill and picnic table with that site. Staff has had discussions with HACEP and they have assured the Department that compliance with the requirements is possible and reasonably foreseen without the need for a waiver or amendment.

Site Analysis: The proposed development includes multiple sites in the Segundo Barrio neighborhood in El Paso that are located in two different census tracts. The applicant disclosed the presence of several undesirable neighborhood characteristics under §10.101(a)(4)(B) of the Uniform Multifamily Rules that require additional site analyses. Those undesirable characteristics include the following: the two census tracts (0019.00 and 0020.00) that contain the proposed developments have poverty rates of 67.6% and 56.3%, respectively; a middle school for the attendance zone does not have a Met Standard rating according to the 2015 TEA Accountability Ratings, and the Environmental Site Assessment ("ESA") for the development site(s) indicates a Resource Conservation and Recovery Act ("RCRA") and Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLIS") facility listing within the ASTM-required search distances from the approximate boundaries of the site(s).

As it relates to the poverty rate, disclosure is required for poverty rates that exceed 55% for developments in regions 11 and 13. Staff analysis for the census tracts in question revealed a median household income for census tract (0019.00) of \$10,853 and \$14,489 for census tract (0020.00), with an average annual change in per capita income of 13% associated with both tracts. Concerning census tract (0019.00) there was a 9% decrease in those earning less than \$10,000, and a 6% increase in those households earning over \$40,000 (the median household income for the El Paso MSA is \$40,699), with a corresponding population decrease of approximately 123 households. Concerning census tract (0020.00), there was a 5% increase in the households earning between \$60,000 - \$75,000 and a 2% increase in those households between \$75,000 - \$100,000, with a corresponding population increase of approximately 217 households over the most recent 5-year period. The composition of the neighborhood (inclusive of both census tracts) involves 65% apartments/townhomes and 28% is single family residential, with the median home value of approximately \$56,000, according to Neighborhoodscout. Staff notes the poverty rate in census tract (0020.00) reflects a decrease of 7.6% over the prior year while the poverty rate in census tract (0019.00) has remained the same.

As it relates to the school attendance zone, Guillen Middle School did not achieve a Met Standard rating, based on the 2015 TEA Accountability ratings; however, the Met Standard rating was achieved in 2014. An article titled "Seven El Paso Schools Fail to Meet Standard" from the *El Paso Times* dated August 11, 2015, indicated that Guillen Middle School received three distinctions last year in science, closing performance gaps and post-secondary readiness. The El Paso ISD ("EPISD") deputy superintendent stated "Guillen's improvement required rating was a huge drop" and that they are "still reviewing data to identify where Guillen struggled..." and "...new principals, new programs and struggling English Language Learners and

special education students seem to have played a role.” Moreover, the article stated that according to state data, more than 40% of students at Guillen are classified as English Language Learners. The EPISD deputy superintendent also stated EPISD officials are working to implement a new curriculum aligned to more challenging state standards to better support teachers intervening to help struggling students.” The article further stated “...Guillen will have new principals this year...” and the deputy superintendent feels “very strongly the school will be making gains next year.” A campus improvement plan was submitted and reflected formative reviews were scheduled for October, 2015, January, 2016, March, 2016 and June, 2016. As of the January update, there was continued progress, some even with considerable progress made on several of the goals and performance objectives identified in the improvement plan. Among those with considerable progress was to hire and retain highly qualified teachers and parent training in using technology to communicate with teachers via email and use of the online parent portal system. Moreover, they have several meetings each month with parents to keep them informed of school activities and issues concerning students.

Lastly, regarding the environmental undesirable neighborhood characteristic, the proposed scattered site development is located within the ASTM-search distances of two CERCLIS sites, which include the El Paso Gas Electric Light and the El Paso Drum Site. These sites are within a 0.50 mile radius of the proposed development. Moreover, there is an RCRA Generator/Handler of Hazardous Waste within 0.25 mile radius of the proposed development. The entity of record for this facility is a Family Dollar and is coded as RCRA-CESQG which stands for Conditionally Exempt Small Quantity Generator and indicates the facility generates no more than 220 lbs of hazardous waste per month. This designation requires compliance with several basic waste management requirements to remain exempt from the full hazardous waste regulations that apply to generators of large quantities of waste. According to the ESA provider, these facilities are topographically cross-gradient from the proposed development, and based on the listed distances, topographic relationship, and/or current regulatory status, they are not suspected to present environmental concerns. The ESA provider did not recommend additional assessments or diligence that would need to be performed and staff does not believe the disclosure requires further review.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristics on the basis that the development includes the preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions. Currently, 100% of the units at Charles R. Morehead are public housing units under Section 9. After reviewing all of the aforementioned facts relative to the components of poverty, school standards and ESA issues disclosed, staff recommends the proposed development site(s) be considered eligible. It is also worth noting that the scope of work planned for this development involves approximately \$47,000/unit in rehabilitation costs which far exceeds the minimum threshold in the rule of \$25,000/unit.

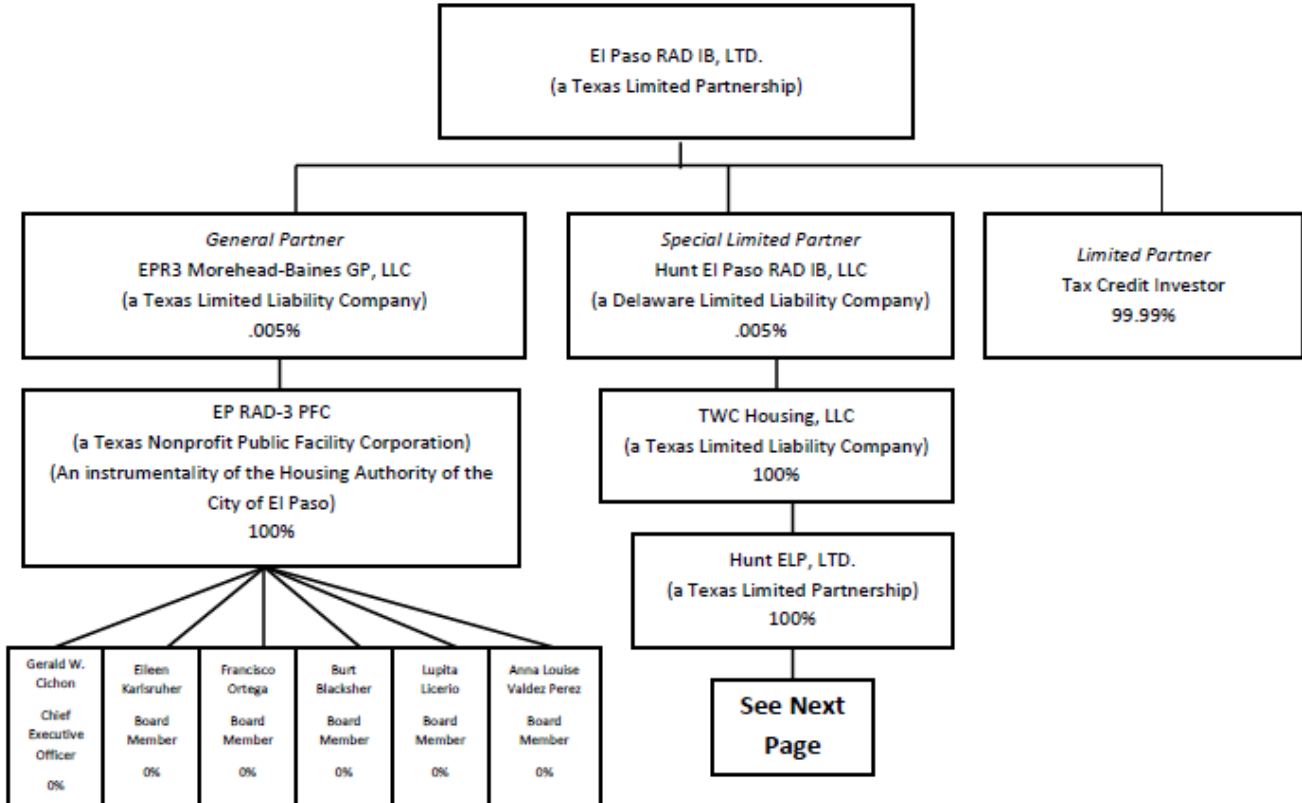
Organizational Structure: The Borrower is El Paso RAD 1B, LTD. and includes the entities and principals as indicated in the organization chart below. The EARAC met on April 18, 2016, and subsequently on April 21, 2016, and considered the previous participation review documentation associated with the application in addition to the information provided by the applicant in response to the review. In accordance with 10 TAC §1.301(d)(1), the compliance history was designated as an Extra Large Portfolio Category 4, which reads as follows in the rule:

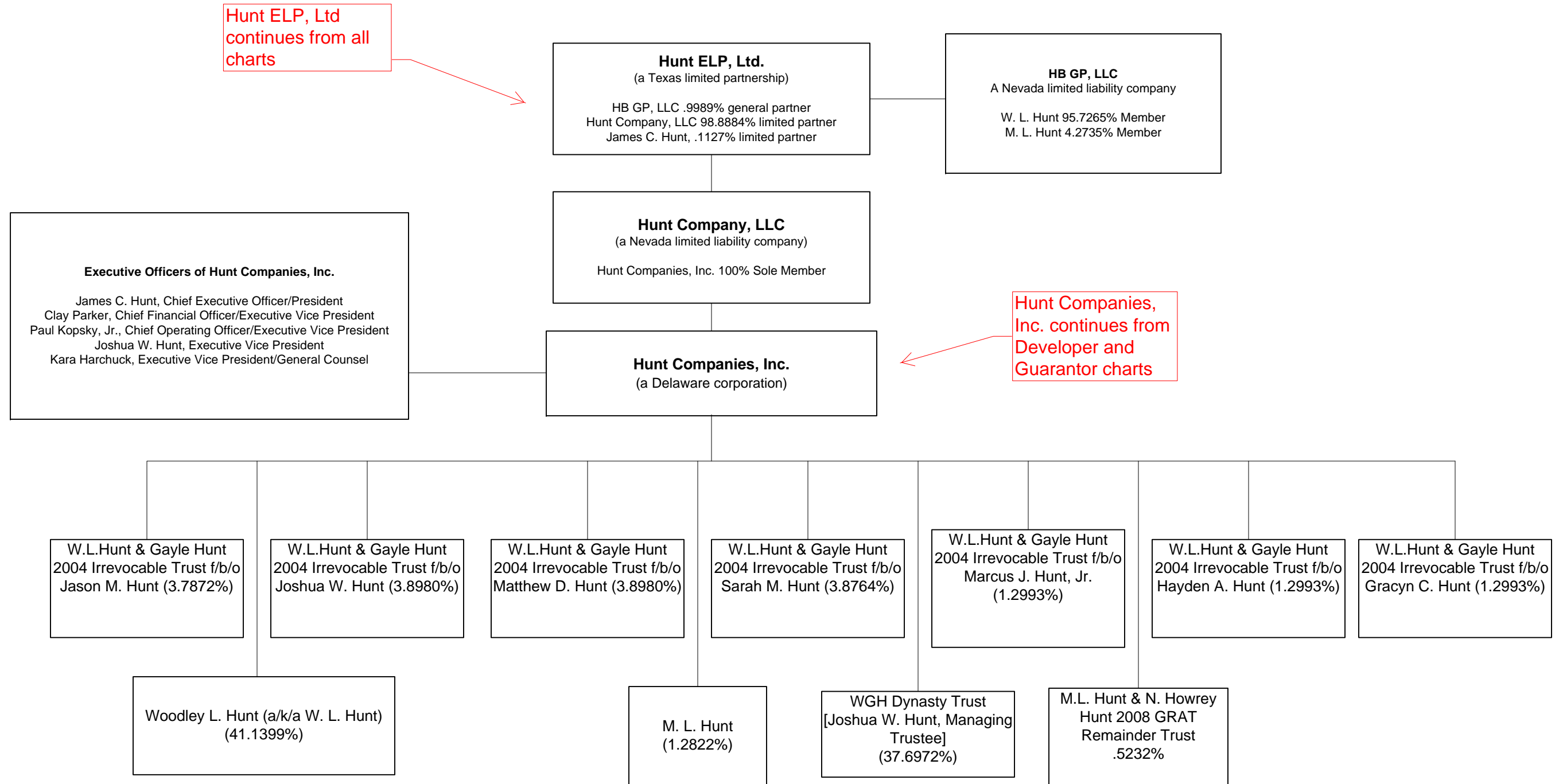
“(4) Category 4. Applications will be notified of their status and if they wish to pursue the award should be prepared to propose terms and conditions specific to their compliance history, along with identifying specific dates to correct uncorrected events. EARAC may

accept, modify or reject the applicant's proposal. If the proposal is modified or rejected, the applicant may appeal in accordance with §1.304 of this subchapter.”

EARAC met with the applicant and members of the development team on April 19, 2016, and in response to the meeting and information provided by the applicant EARAC recommends approval of the application conditioned upon those items noted herein, as modified by staff.

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





Hunt ELP, Ltd
continues from all
charts

Hunt Companies,
Inc. continues from
Developer and
Guarantor charts

Initial Response to
Previous Participation
Review



April 12, 2016

Texas Department of Housing and Community Affairs
Executive Review Committee

Re: Response to Previous Participation Review for George W. Baines and Charles R. Morehead
Applications #16401 and #16402

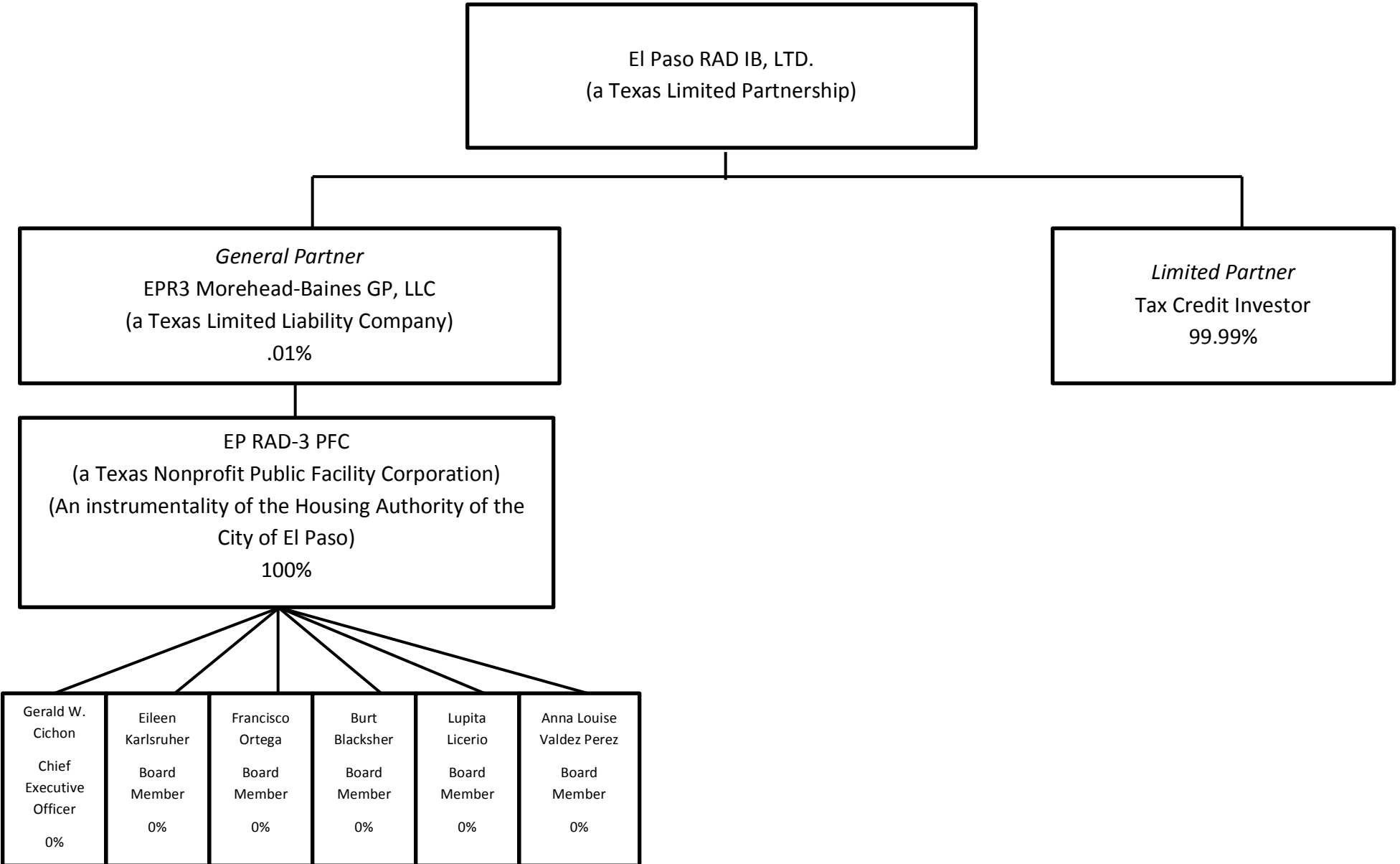
During the Previous Participation Review for the Baines and Morehead application, it was brought to our attention that the combined portfolio of the Housing Authority of the City of El Paso (HACEP) and Hunt Development (Hunt) was classified as a Category 4 portfolio, and therefore the applications were ineligible for recommendation for an award.

We propose to address this situation by removing Hunt Development from the ownership structure, and have HACEP as the sole Applicant. According to the current Previous Participation Rules (Chapter 1, Subchapter C) HACEP, as the Applicant, would be a Category 2 portfolio, and require no further review. Please see the attached Organizational Chart with the proposed revised ownership structure, and the revised Tab 38 – List of Organizations and Principals.

In response to the findings of the PPR, and would like to present the following information for your consideration in reviewing the individual portfolios:

- 1) Previous Participation Response from HACEP.
- 2) Previous Participation Response from Alden Torch, asset manager

Ownership Organizational Chart



Gerald W. Cichon	Eileen Karlsruher	Francisco Ortega	Burt Blacksher	Lupita Licerio	Anna Louise Valdez Perez
Chief Executive Officer	Board Member	Board Member	Board Member	Board Member	Board Member
0%	0%	0%	0%	0%	0%

List of Organizations and Principals

Provide the requested information for all partnerships, corporations, limited liability companies, trusts, or any other public or private entity and their Affiliates identified on the Owner and Developer Organization Charts. Organizations that own or control other organizations should also be identified until the only remaining sub-entity would be natural persons. Organizations that are Developers and/or Guarantors must also be listed on this form as must any organization (and natural person whose ownership interest in an applicable entity is direct instead of via membership in an organization) that will receive more than 10% of the developer fee. (Note - Entity Names, Principals, and ownership percentage should coincide with the Owner and Developer Organization Charts)

Applicant Legal Name: <u>El Paso RAD IB, LTD.</u>	
Address: <u>5300 E. Paisano Dr.</u>	City: <u>El Paso</u> State: <u>TX</u> Zip: <u>79905</u>
Name(s) of Entities the Organization Owns or Controls: <u>100% development owner</u>	
Organization legally formed? <u>Yes</u>	Date formed: <u>10/29/15</u> Legal Org is or will be: <u>Limited Partnership</u>
Previous TDHCA Experience? <u>No</u>	Phone: <u>(915) 849-3813</u> Email: <u>rseges@hacep.org</u>

Org. 1

Organization Legal Name: <u>EPR3 Morehead-Baines GP, LLC</u>		Role/Title: <u>General Partner</u>
Address: <u>5300 E. Paisano Dr.</u>	City: <u>El Paso</u> State: <u>TX</u> Zip: <u>79905</u>	
Name(s) of Entities the Organization Owns or Controls: <u>0.01% of El Paso RAD IB, LTD.</u>		
Organization legally formed? <u>Yes</u>	Date formed: <u>8/21/14</u>	Legal Org is or will be: <u>Limited Liability Company</u>
Previous TDHCA Experience? <u>No</u>	Phone: <u>915-849-3813</u>	Email: <u>rseges@hacep.org</u>
Organization is identified on Org. Chart: <u>Yes</u>		
List of Sub-Entities or Principals:		
1. <u>EP RAD-3 PFC</u>	2. <u>NA</u>	3. <u></u>
TDHCA Experience: <u>No</u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>
4. <u></u>	5. <u></u>	6. <u></u>
TDHCA Experience: <u></u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>

Org. 1.1

Organization Legal Name: <u>EP RAD-3 PFC</u>		Role/Title: <u>Member of Owner</u>
Address: <u>5300 E. Paisano Dr.</u>	City: <u>El Paso</u> State: <u>TX</u> Zip: <u>79905</u>	
Name(s) of Entities the Organization Owns or Controls: <u>100% of EPR3 Morehead-Baines GP, LLC</u>		
Organization legally formed? <u>Yes</u>	Date formed: <u>10/19/15</u>	Legal Org is or will be: <u>Non-Profit</u>
Previous TDHCA Experience? <u>No</u>	Phone: <u>915-849-3813</u>	Email: <u>rseges@hacep.org</u>
Organization is identified on Org. Chart: <u>Yes</u>		
List of Sub-Entities or Principals:		
1. <u>Gerald W. Cichon</u>	2. <u>Eileen Karlsruher</u>	3. <u>Burt Blacksher</u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>
4. <u>Francisco Ortega</u>	5. <u>Lupita Licerio</u>	6. <u>Anna Louise Valdez Perez</u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>

Org. dev

Organization Legal Name: <u>El Paso RAD IB Developer, LLC</u>		Role/Title: <u>100% Developer</u>
Address: <u>5300 E. Paisano Dr.</u>	City: <u>El Paso</u> State: <u>TX</u> Zip: <u>79905</u>	
Name(s) of Entities the Organization Owns or Controls: <u>100% Developer</u>		
Organization legally formed? <u>No</u>	Date formed: <u>TBF</u>	Legal Org is or will be: <u>Limited Liability Company</u>
Previous TDHCA Experience? <u>No</u>	Phone: <u>915-849-3813</u>	Email: <u>rseges@hacep.org</u>
Organization is identified on Org. Chart: <u>Yes</u>		
List of Sub-Entities or Principals:		
1. <u>Paisano El Paso RAD IB Developer, Inc.</u>	2. <u>Hunt El Paso RAD IB Developer, LLC</u>	3. <u>NA</u>
TDHCA Experience: <u>No</u>	TDHCA Experience: <u>No</u>	TDHCA Experience: <u></u>
4. <u></u>	5. <u></u>	6. <u></u>
TDHCA Experience: <u></u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>

Org.
dev

Organization Legal Name: Paisano El Paso RAD IB Developer, Inc. Role/Title: Member of Developer

Address: 5300 E. Paisano Dr. City: El Paso State: TX Zip: 79905

Name(s) of Entities the Organization Owns or Controls: 50% of El Paso RAD IB Developer, LLC

Organization legally formed? No Date formed: TBF Legal Org is or will be: Corporation

Previous TDHCA Experience? No Phone: 915-849-3813 Email: rseges@hacep.org

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. Paisano Housing Redevelopment Corporation	2. NA	3.
TDHCA Experience: Yes	TDHCA Experience:	TDHCA Experience:
4.	5.	6.
TDHCA Experience:	TDHCA Experience:	TDHCA Experience:

Org.
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Organization Legal Name: Paisano Housing Redevelopment Corporation Role/Title: Member of Developer and Guarantor

Address: 5300 E. Paisano Dr. City: El Paso State: TX Zip: 79905

Name(s) of Entities the Organization Owns or Controls: 100% of Paisano El Paso RAD IB Developer, Inc.

Organization legally formed? Yes Date formed: 8.12.96 Legal Org is or will be: Non-Profit

Previous TDHCA Experience? Yes Phone: 915-849-3813 Email: rseges@hacep.org

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. Gerald W. Cichon	2. Eileen Karlsruher	3. Burt Blacksher
TDHCA Experience: Yes	TDHCA Experience: Yes	TDHCA Experience: Yes
4. Francisco Ortega	5. Lupita Licerio	6. Anna Louise Valdez Perez
TDHCA Experience: Yes	TDHCA Experience: Yes	TDHCA Experience: Yes

Org.
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Organization Legal Name: Hunt El Paso RAD IB Developer, LLC Role/Title: Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 50% of El Paso RAD IB Developer, LLC

Organization legally formed? No Date formed: TBF Legal Org is or will be: Limited Liability Company

Previous TDHCA Experience? No Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. Blunn Developers, LTD	2. NA	3.
TDHCA Experience: Yes	TDHCA Experience:	TDHCA Experience:
4.	5.	6.
TDHCA Experience:	TDHCA Experience:	TDHCA Experience:

Org.
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Organization Legal Name: Blunn Developers, LTD Role/Title: Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 100% of Hunt El Paso RAD IB Developer, LLC

Organization legally formed? Yes Date formed: 8/17/01 Legal Org is or will be: Limited Partnership

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. Hunt Housing Guaranty, LLC	2. Hunt Companies, Inc.	3. NA
TDHCA Experience: Yes	TDHCA Experience: Yes	TDHCA Experience:
4.	5.	6.
TDHCA Experience:	TDHCA Experience:	TDHCA Experience:

Org.
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Organization Legal Name: Hunt Housing Guaranty, LLC Role/Title Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 1% of Blunn Developers, LTD

Organization legally formed? Yes Date formed: 12/30/99 Legal Org is or will be: Limited Liability Company

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. <u>Hunt ELP, LTD.</u>	2. <u>NA</u>	3. <u></u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>
4. <u>NA</u>	5. <u></u>	6. <u></u>
TDHCA Experience: <u></u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>

Org.
dev

Organization Legal Name: Hunt ELP, LTD. Role/Title Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 100% Hunt Housing Guaranty, LLC and 99% HDG Investments, LLC

Organization legally formed? Yes Date formed: 5/18/00 Legal Org is or will be: Limited Partnership

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. <u>HB GP, LLC</u>	2. <u>Hunt Company, LLC</u>	3. <u>James C. Hunt</u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>
4. <u></u>	5. <u></u>	6. <u></u>
TDHCA Experience: <u></u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>

Org.
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Organization Legal Name: Hunt Company, LLC Role/Title Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 98.8884% of Hunt ELP, LTD.

Organization legally formed? Yes Date formed: 10/3/05 Legal Org is or will be: Limited Liability Company

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. <u>Hunt Companies, Inc.</u>	2. <u>NA</u>	3. <u></u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>
4. <u></u>	5. <u></u>	6. <u></u>
TDHCA Experience: <u></u>	TDHCA Experience: <u></u>	TDHCA Experience: <u></u>

Org.
dev

Organization Legal Name: Hunt Companies, Inc. Role/Title Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 100% of Hunt Company, LLC, and 99% of Blunn Developers, LTD. and 1% of HDG Investments, LLC

Organization legally formed? Yes Date formed: 4/1/01 Legal Org is or will be: Corporation

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. <u>Woodley L. Hunt (aka W.L. Hunt)</u>	2. <u>Joshua W. Hunt</u>	3. <u>James C. Hunt</u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>
4. <u>Clay Parker</u>	5. <u>Paul Kopsky, Jr.</u>	6. <u>Kara Harchuck</u>
TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>	TDHCA Experience: <u>Yes</u>

Org.
dev

Organization Legal Name: HB GP, LLC Role/Title Member of Developer

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: 0.9989% of Hunt ELP, LTD.

Organization legally formed? Yes Date formed: 3/9/00 Legal Org is or will be: Limited Liability Company

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. <u>W.L. Hunt</u> TDHCA Experience: <u>Yes</u>	2. <u>M.L. Hunt</u> TDHCA Experience: <u>Yes</u>	3. <u>NA</u> TDHCA Experience: <u></u>
4. <u></u> TDHCA Experience: <u></u>	5. <u></u> TDHCA Experience: <u></u>	6. <u></u> TDHCA Experience: <u></u>

Org.
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Organization Legal Name: HDG Investments, LLC Role/Title Guarantor

Address: 4401 N Mesa City: El Paso State: TX Zip: 79902

Name(s) of Entities the Organization Owns or Controls: Guarantor Entity

Organization legally formed? Yes Date formed: 11/14/08 Legal Org is or will be: Limited Liability Company

Previous TDHCA Experience? Yes Phone: 915-298-4250 Email: robin.vaughn@huntcompanies.com

Organization is identified on Org. Chart: Yes

List of Sub-Entities or Principals:

1. <u>Hunt ELP, Ltd</u> TDHCA Experience: <u>Yes</u>	2. <u>Hunt Companies, Inc.</u> TDHCA Experience: <u>Yes</u>	3. <u>NA</u> TDHCA Experience: <u></u>
4. <u></u> TDHCA Experience: <u></u>	5. <u></u> TDHCA Experience: <u></u>	6. <u></u> TDHCA Experience: <u></u>

Org.

Organization Legal Name: NA Role/Title

Address: City: State: Zip:

Name(s) of Entities the Organization Owns or Controls:

Organization legally formed? Date formed: Legal Org is or will be:

Previous TDHCA Experience? Phone: Email:

Organization is identified on Org. Chart:

List of Sub-Entities or Principals:

1. <u></u> TDHCA Experience: <u></u>	2. <u></u> TDHCA Experience: <u></u>	3. <u></u> TDHCA Experience: <u></u>
4. <u></u> TDHCA Experience: <u></u>	5. <u></u> TDHCA Experience: <u></u>	6. <u></u> TDHCA Experience: <u></u>



April 12, 2016

Texas Department of Housing and Community Affairs

Re: **HACEP Previous Participation Responses for 16401 and 16402**

This is written to supplement the previous participation response for 16401 and 16402. Please see responses to previous participation items brought to our attention. Please note that all items, save one, were responded to during the corrective action period -- the item that did not receive a timely response was delinquent by two days. Additionally, all but two items have been successfully resolved: North Mountain Village was unable to be resolved because the tenants moved out and Eastside Crossing is currently implementing a plan to resolve the issue.

1. North Mountain Village

In September 2013, the City of El Paso experienced unexpectedly heavy rains. This weather brought about the flooding of three buildings in North Mountain Village, and families living in five out of seven units had to be relocated. The welfare of the displaced families immediately became the main priority for the Housing Authority of the City of El Paso and its affiliated entities (collectively, "HACEP"). Since the families were only being placed in the units temporarily, HACEP did not deem this provision as a new move-in, but provisional lodging. Additionally, when the Annual Eligibility Certification is performed a Fair Housing Disclosure Notice is not required, thus supporting HACEP's original position of not having this form executed once more.

In the midst of dealing with the casualty loss the development incurred, third parties began to be informed. The Texas Department of Housing and Community Affairs ("TDHCA") informed HACEP of additional documentation needed as a result of the displaced families, and the process to obtain the required information began.

Working diligently with contractors, repairs to the affected units were done within a three month span.

This endeavor allowed families to move back to their original residence, but not all were receptive to HACEP's efforts. Independently two households decided to relocate completely, resulting in only three of the five necessary Fair Housing Disclosure Notices being executed.

The interests and well-being of all parties became the next priority and a complete project assessment began. Based on the findings, project-wide repairs were initiated to minimize the chance of the same thing happening in the future. Due to the continued rains in the El Paso area, repairs were delayed, and multiple UPCS extensions were requested. After an investment of \$275,000, capital improvements to breeze ways, roofs, walls, and foundations were completed at the end of 2014. A detailed scope of work and correspondence file has been maintained and is available for review.



HACEP has been diligent in accommodating its residents and responding to TDHCA's requests, and has taken into account the events that transpired in the previous year and has incorporated new procedures to ensure Fair Housing Disclosures Notices are executed not only when a new move in takes place, but at any time a change in unit takes place as well.

The applicant took reasonable measures within their power to remedy these issues.

2. **Eastside Crossings: Accessibility issue**

HACEP owns an interest in the Managing General Partner of Eastside Crossings. A Final Development Inspection at this property was conducted by TDHCA on May 1, 2015. TDHCA documented a deficiency with a four-bedroom townhouse unit (#1805) as not being in full compliance with UFAS accessibility standards. The unit had only one accessible bedroom downstairs. The inspector cited UFAS 4.34.2 Minimum Requirements.

During the TDHCA 9% application process, HUD had reviewed the UFAS units and common areas. At that time, HUD had requested a change to increase the square footage in the UFAS units. HUD approved the four-bedroom unit at issue as it currently exists. The original drawings were submitted to TDHCA with the final 9% application and included the UFAS unit configurations. TDHCA approved the application and a Commitment Notice was issued.

Amended drawings of the UFAS units were subsequently submitted to TDHCA requesting approval to HUD's request to increase the square footage for the UFAS units. TDHCA staff and the Board approved the amended drawings. El Paso City requirements only require one of each bedroom configuration for UFAS units. Therefore, there is no local issue with accessibility requirements.

The managing general partner of Eastside Crossings development, in which HACEP has only ownership interest (but not control), has continued working with TDHCA on behalf of the development owner on how to address this issue. A final determination was made within the last few weeks. Specifically, the development owner has begun the process to make modifications to the four-bedroom unit at issue so that it complies with the position set forth by TDHCA. The development owner is moving forward with the required changes.

3. **Saul Kleinfeld: HUB**

4. **Western Carolina: HUB**

Both of these developments went through a process to remove the HUB requirement from the development partnership so that a HACEP-affiliated entity would satisfy all TDHCA regulations and requirements with respect to these two developments. This was a previously approved action by TDHCA. A subsequent LURA amendment was to be recorded to document this TDHCA-approved change. The LURA change for one of these two developments took longer than was initially set, but the LURA change was eventually completed for both developments. The general partner asked for extensions of time to accomplish this task. This was not something that could have been anticipated by the owner of the property (or HACEP), and in any event, the delay in completing the LURA did not in any way adversely impact the tenants or operations.

HACEP PPR Exhibit

Property Name	Event Description	Corrected? (Y or N)	During CAP?	Some type of CA rec'd during CAP?	Clarifications	Policy & Procedure going forward to ensure instance does not recur.
Saul Kleinfeld HACEP	No evidence of, or failure to certify to, material participation of a HUB	Y	N	Y	HACEP went through a long process to replace the HUB with a nonprofit. While this was an approved action and proof of the nonprofit participation was not in question, a subsequent LURA had to be amended to finalize the proof of this change. This LURA change took longer than was allowed during the corrective action period. This was not something that could have been anticipated by the Developer and did not in any way adversely impact the tenants.	HACEP does not anticipate doing business with HUBs going forward, as it qualifies as a nonprofit. In the event that HACEP acquires another property that had HUB involvement, they are now aware of the process, and the amount of time required, and can initiate the process prior to acquisition in order to make the changes within the allocated timeframe.
North Mountain Village HACEP	Failure to Provide Fair Housing Disclosure Notice	N	N	Y	HACEP temporarily relocated five households as a result of flooding. TDHCA informed HACEP of additional documentation needed as a result of the displaced families, and the process to obtain the required information began. Two household decided to relocate completely resulting in only three of the five necessary Fair Housing Disclosure Notices to be executed.	HACEP takes Fair Housing very seriously. In response to this event, we have updated our disclosure policies to take into account temporary placement, as well as permanent placement of residents.
Eastside Crossings HACEP	Failure to resolve final construction deficiencies within CAP	N	N	Y	TDHCA documented a deficiency with a four bedroom townhouse unit as conforming to UFAS accessibility standards; however, not in full compliance with standards. The unit had only one accessible bedroom down stairs. Amended drawings of the UFAS units have been submitted to TDHCA, requesting approval to HUD's request to increase the square footage for the UFAS units. TDHCA staff and the Board approved the amended drawings. HACEP is moving forward with the required changes.	This event was due to contradicting rules between TDHCA, HUD, and the City of El Paso. To ensure that this type of noncompliance doesn't happen again, we will make sure that the Third Party Construction Monitor/Inspector is given all of the accessibility requirements for all governmental entities so that the architect, developer, and inspector together will ensure compliance with the most restrictive covenants.
Western Carolina HACEP	No evidence of, or failure to certify to, material participation of a HUB	Y	N	Y	HACEP went through a long process to replace the HUB with a nonprofit. While this was an approved action and proof of the nonprofit participation was not in question, a subsequent LURA had to be amended to finalize the proof of this change. This LURA change took longer than was allowed during the corrective action period. This was not something that could have been anticipated by the Developer and did not in any way adversely impact the tenants.	HACEP does not anticipate doing business with HUBs going forward, as it qualifies as a nonprofit. In the event that HACEP acquires another property that had HUB involvement, they are now aware of the process, and the amount of time required, and can initiate the process prior to acquisition in order to make the changes within the allocated timeframe.

Date: April 8, 2016

To: TDHCA's Executive Award and Review Advisory Committee

From: Jill Brooks Garnett, COO, Alden Pacific Asset Management, LLC

Re: EARAC review of Hunt's compliance violations

Hunt has requested approval from TDHCA for a project to be developed in partnership with the Housing Authority of the City of El Paso. This project will include an award of Low Income Housing Tax Credits and a tax exempt bond allocation. As part of the award approval process, TDHCA's Executive Award and Review Advisory Committee (EARAC) has shared their findings of Hunt's previous participation disclosures and has requested a response outlining why past compliance violations will not be repeated in the prospective development project.

The instances of noncompliance cited in the report were all corrected outside the corrective period and can broadly be characterized into one of three categories: i) responses to file audits and physical inspections; ii) providing social services in accordance with the LURA; and iii) replacing a non-performing HUB. To address TDHCA's concerns about the likelihood of recurrence of these violations, we address each of these categories below:

i) Responses to File Audits and Physical Inspections

Alden Pacific Asset Management, LLC, (Alden) acts as Asset Manager for Hunt Companies, Inc. with respect to certain of its Affordable Housing projects. Alden has researched the audit findings for each of the instances referenced in the report. For those instances of either "household income above limit at initial occupancy" or "violations of the Uniform Physical Condition Standard", we found that the property managers submitted the initial response on, or immediately prior to, the TDHCA deadline thus not allowing sufficient time to receive and respond to feedback from TDHCA. Going forward, Hunt requires that its projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for feedback and subsequent corrective reporting. Alden (in its role as Asset Manager) or Hunt will conduct semi-annual reviews of its property managers' adherence to this policy.

ii) Noncompliance with social service requirements

After two violations in 2013, Hunt's property manager changed its internal policies to include a review of all properties' LURAs for required social service compliance. Their policy now includes that the LURA specifications are met for both the types of services as well as for the qualifications of service providers—with an annual review conducted by the compliance department. Alden (in its role as Asset Manager) or Hunt will

conduct separate annual reviews that will include a comparison of the LURA to the properties' social services and service providers.

iii) Non-performing HUB

The specific violations noted in the EARAC's report related to a HUB entity that ceased to perform its contractual obligations to the partnership. Hunt and Alden worked diligently to find a suitable replacement HUB and sought and received lender and limited partner approvals for the replacements. Due to the necessity of third party involvement and cooperation, the length of the process was beyond Hunt's complete control. Hunt is no longer developing properties with HUB participation requirements thus the challenges it had with past non-performance by its HUB partnerships will not be repeated.

For all but the HUB violations, the attached exhibit outlines the specific violation, the corrective action deadline, the property managers' initial response date, and the revised policy to mitigate recurrence.

Hunt can provide additional information for any of the above reference instances or policy changes as may be useful in EARAC's award review.

Exhibit

Property Name	Event Description	TDHCA Deadline	LEDIC Initial Response to TDHCA	Clarifications	Policy & Procedure going forward to ensure instance does not recur.
Cantbury Pointe ALDEN	HH income above limit upon initial occ/Unit not leased to LI HH	12/30/2013	12/27/2013	For the Over Income finding for unit #3618K LEDIC agreed and followed the Next Available Unit Rule to get the unit back in compliance.	Hunt is requiring that our projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for TDHCA feedback and subsequent corrective reporting.
Skyway Villas HUNT	HH income above limit upon initial occ/Unit not leased to LI HH	5/7/2014	5/5/2014	Per LEDIC, The issue surrounded child support income for a resident that claimed she was not receiving child support. LEDIC disputed the finding with TDHCA, but they ultimately disagreed and required corrective documentation. The resident had to go back to the TX Attorney General office to get documentation that she was cooperating in their attempt to collect past due child support. The bottom line is that the household income was certified correctly at move in, TDHCA required additional documentation from the property in order to satisfy their concerns.	Hunt is requiring that our projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for TDHCA feedback and subsequent corrective reporting.
Red Hills Villas HUNT	Noncompliance with social service requirements	1/18/2013	1/18/2013		Hunt's property manager changed its internal policy in 2013 to require reviews of the LURA and qualifications of each service provider on an annual basis to confirm that they meet all of the requirements listed by TDHCA.
Tigua Village HUNT	Noncompliance with social service requirements	2/13/2013	Missing Initial Response		Hunt's property manager changed its internal policy in 2013 to require reviews of the LURA and qualifications of each service provider on an annual basis to confirm that they meet all of the requirements listed by TDHCA.
Western Mesa Hills HUNT	Violations of the Uniform Physical Condition Standard	4/6/2015	4/6/2015	LEDIC believes this was a glitch in the TDHCA system and everything was turned in on time. LEDIC is looking for an email discussing this.	Hunt is requiring that our projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for TDHCA feedback and subsequent corrective reporting.
Sterlingshire Apartments ALDEN	Violations of the Uniform Physical Condition Standards	10/27/2015	10/27/2015	LEDIC dose not think this audit should have been noted as submitted late – the additional information requested was not a deficiency listed on the original report.	Hunt is requiring that our projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for TDHCA feedback and subsequent corrective reporting.
Blunn Creek Apartments ALDEN	Violations of the Uniform Physical Condition Standards	6/4/2015	6/4/2015	Per LEDIC, The Halls/Corridors/Stairs Doors in buildings 1, 11, 3, 6, and 8 and heat sensor in building 7. Due to storms and inclement weather ACE Fire and Equipment Company was not able to assess the scope of work or start any repairs until 6/3/2015 all repairs will be completed by 7/4/2015.	Hunt is requiring that our projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for TDHCA feedback and subsequent corrective reporting.
Champions Crossing HUNT	Violations of the Uniform Physical Condition Standards	11/3/2014	11/3/2014	Per LEDIC, The finding related to a paint deficiency on the exterior of the buildings. The property owner (Hunt) contracted with a vendor to paint the buildings. The contractor did not meet the terms of the contract and Hunt was forced into litigation with the contractor which delayed the completion of the work. Ultimately the work was completed and TDHCA accepted the corrective action.	Hunt is requiring that our projects' property managers submit initial responses no later than 30 days prior to the TDHCA deadline to allow sufficient time for TDHCA feedback and subsequent corrective reporting.

Follow-up Response to
Previous Participation
Review



April 20, 2016

Texas Department of Housing and Community Affairs
Executive Review Committee

Re: George W. Baines and Charles R. Morehead Applications #16401 and #16402
Follow-up to meeting on April 19, 2016

I. Conditions in Response to Previous Participation Review

1. For Eastside Crossing: The unit currently out of UFAS compliance will be completely renovated and the property brought into compliance by August 16, 2016. If HACEP fails to complete construction by August 1, 2016, HACEP acknowledges that EARAC will not recommend HACEP for any additional Department funds administered by the Department including Housing Tax Credits through December 31, 2017.

In Response to Accessibility Violation:

2. HACEP Portfolio: A qualified third party accessibility specialist will review all architectural plans to confirm compliance with TDHCA accessibility standards.
3. HACEP Portfolio: Appropriate staff will attend accessibility training to ensure knowledge of and compliance with TDHCA accessibility requirements.

In Response to Fair Housing Disclosure Violation:

4. HACEP Portfolio: Upper management and appropriate staff will participate in Fair Housing Training to ensure knowledge of and compliance with disclosure requirements.
5. HACEP Portfolio: Disclosure policies have been updated to include temporary as well as permanent moves and will be utilized.



In Response to Timely Correction of Compliance Findings:

6. HACEP: Institute a software tracking system to identify deliverables, responsible persons, date/time, and final approvers.
7. HACEP: Upper management will enroll with TDHCA Listserv, and appropriate personnel will attend Compliance related roundtables and trainings over the next year.
8. HACEP: As GP affiliate, HACEP will be added as a contact in CMTS to ensure timely notice of any actionable items.

In Response to HUB Participation:

9. HACEP: HACEP will adopt an underwriting policy for future partners, including HUBs, that will require upfront due diligence on the potential partners. In addition to the standard RFQ, the following will be part of the process:
 - Request Compliance history from TDHCA to determine their eligibility to participate in the tax credit program.
10. HACEP: HACEP will implement an acquisition review process to identify upfront whether a potential acquisition requires a HUB partner. The following will be part of the process:
 - Each acquisition will include a review as to whether a HUB is a part of the development.
 - Research will determine whether the HUB's continued participation is required as part of the acquisition
 - An appropriate HUB will be identified and their compliance history will be requested from TDHCA to determine their eligibility to participate in the tax credit program.
 - Work with TDHCA for approval of the new HUB.
 - A partnership agreement will include the roles and responsibilities of the HUB to ensure that they are materially participating as required by HUD and TDHCA rules.
 - Once an eligible entity has been vetted and determined to be eligible, they will be a part of the partnership upon closing of the development, to ensure that there is no lapse of HUB participation in the development.



II. Morehead Amenities

The Architect for the project has confirmed that there is no written code for the City of El Paso regarding the placement of barbecue grills on multifamily properties, but the generally accepted distance is 5 feet. The plans we submitted showing the placement of barbecue grills and the amenities schedule we submitted on March 28, 2016 is what we intend for Morehead. (See Attachment A)

While we have attempted to have amenities worth 4 points at each of the scattered sites, there is not room for a barbecue grill and picnic table at the Father Rahm site, which has only 2 units, but we are providing amenities worth 3 points at this site.

Please note that all of the sites are less than 16 units, which is the minimum given for provision of common amenities per the Multifamily Rules. It is our opinion that we are exceeding requirements with the level of amenities proposed for this project, but are doing so because we feel it is in the best interest of our residents.

According to the **Uniform Multifamily Rules Section 10.101(b)(5) (A)** *All Developments must include sufficient common amenities as described in subparagraph (C) of this paragraph to qualify for at least the minimum number of points required in accordance with clauses (i) - (vi) of this subparagraph. For Developments with 41 Units or more, at least two (2) of the required threshold points must come from subparagraph (C)(xxxi) of this paragraph; (i) Developments with 16 to 40 Units must qualify for four (4) points; and Section 10.101(b)(5) (B) Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site, which includes those amenities required under subparagraph (C)(xxxi) of this paragraph. If scattered site with fewer than 41 Units per site, at a minimum at least **some** of the amenities required under subparagraph (C)(xxxi) of this paragraph must be distributed proportionately across all sites.*

In the event that the Department disagrees with our reading of the Rule, we would propose more Green Building features for the Father Rahm site, to qualify for 4 points.

Amenities for Morehead Sites

Site Plan	Site	Units	Address	Amenities
MORE-A002	Site 1	5	721 Park Street	BBQ Grill and Picnic Table Bicycle Rack Green Building Features
	Site 4	5	801 Park Street	BBQ Grill and Picnic Table Bicycle Rack Green Building Features
MORE-A003	Site 2	15	701/707/709 Park Street	BBQ Grill and Picnic Table Bicycle Rack Green Building Features
	Site 3	2	1206 Father Rahm	Bicycle Rack Green Building Features
MORE-A004	Site 5	8	1004 6th/801 Hills	BBQ Grill and Picnic Table Bicycle Rack Green Building Features
MORE-A005	Site 6	14	1007/1009 St Vrain	BBQ Grill and Picnic Table Bicycle Rack Green Building Features
MORE-A006	Site 7	8	620 Kansas	BBQ Grill and Picnic Table Bicycle Rack Green Building Features
MORE-A006	Site 8	5	615 Campbell	BBQ Grill and Picnic Table Bicycle Rack Green Building Features

Date: April 20, 2016

To: TDHCA's Executive Award and Review Advisory Committee

From: Jill Brooks Garnett, COO, Alden Pacific Asset Management, LLC

Kara Harchuck, EVP/General Counsel, Hunt Companies, Inc.

Re: EARAC review of Hunt's compliance violations

Hunt has requested approval from TDHCA for a project to be developed in partnership with the Housing Authority of the City of El Paso. This project will include an award of Low Income Housing Tax Credits and a tax exempt bond allocation. As part of the award approval process, TDHCA's Executive Award and Review Advisory Committee (EARAC) has shared their findings of Hunt's previous participation disclosures and has requested a response outlining why past compliance violations will not be repeated in the prospective development project.

Better Coordination. Alden Pacific Asset Management, LLC, (Alden) acts as Asset Manager for Hunt Companies, Inc. with respect to certain of its Affordable Housing projects that were developed more than ten years ago. In this role, Alden is responsible for overseeing the activities of the property management companies of those assets. The Asset Management responsibilities for those properties listed on Schedule 1 hereto will continue to be managed by Alden. For Schedule 1 projects, Jill Brooks Garnett will be the point of contact from Alden on Hunt's behalf. Beginning June 1, 2016 and thereafter, the asset and property management responsibilities for those projects listed on Schedule 2 will be handled by Ledic Management Group, LLC ("Ledic"). For Schedule 2 projects, Oke Johnson of Ledic and Kara Harchuck of Hunt Companies, Inc., will be the points of contact for Hunt/Ledic. For any new projects including RAD deals or others in which Hunt becomes involved, Kara Harchuck will be the point of contact for Hunt compliance.

Hunt will take an active role to coordinate its communications with TDHCA from Hunt and its various third party and affiliated managers. In order to do so, Hunt will implement a policy requiring immediate notice from its asset and property managers of any compliance violations or red flags, and a prompt call with Hunt legal to discuss next steps and create an estimated timeline for appropriate follow up and completion.

In Summary:

- ***Establish clear, concise points of contact for each property, according to attached Schedules 1 and 2.***
- ***Appoint Kara Harchuck as the point of contact for all RAD transactions.***
- ***Ensure the appropriate contact for each project is registered with CTMS.***
- ***Send appropriate staff to TDHCA Compliance Roundtables and Trainings.***
- ***Implement a tracking system for compliance issues and follow up.***

Although this process will help our team with appropriate reaction, resolution and oversight of compliance problems, Hunt values and will implement a proactive approach to catching potential issues prior to the point of violations. Below outlines a few ways we intend to be more proactive in stopping violations before they occur.

In Response to LURA-Required Social Services: Upon reviewing the findings highlighted by EARAC related to property management responses to the state audits and adherence to LURA-required social services, Alden created two new compliance oversight procedures applicable to the Hunt assets that it manages, to ensure timely responses by property managers. The new policy statements are attached as Schedule 3 for reference.

Hunt will adopt and continue to implement substantially similar policies/procedures for all applicable Hunt assets.

In Summary:

- ***Alden Torch will adopt and implement compliance oversight procedures attached as Schedule 3.***
- ***Hunt will adopt and implement substantially similar policies and procedures.***

In Response to HUB Participation: The specific violations noted in the EARAC's report that related to Historically Underutilized Business (HUB) each related to one particular HUB entity that ceased to perform its contractual obligations to the partnership. Hunt and Alden worked diligently to find a suitable replacement HUB and sought and received lender and limited partner approvals for the replacements. Due to the necessity of third party involvement and cooperation, the length of the process was beyond Hunt's complete control.

However, for future prevention and improvement, Hunt will do the following:

Attached as Schedule 4 to this memo is a policy that Alden has created to address underwriting for future partners, including HUBs. Hunt will adopt and implement a substantially similar policy for any new limited partnership investments that involve LIHTC developments. Hunt legal will work with the applicable deal team or asset manager to confirm the process is being followed for each applicable new investment.

In Summary:

- ***Adopt an underwriting policy for future partners (attached as Schedule 4).***
- ***Request Compliance history from TDHCA to determine their eligibility to participate in the tax credit program.***

Schedule 1: Project Partnerships with Ongoing Asset Management by Alden

Partnership:	Property Name:	HCI GP:	HCI Developer:	Project Partnership Agreement:	HCI Lender:
Blunn Creek, Ltd.	Blunn Creek Apartments	Blunn Creek Housing, LLC	Blunn Developers, Ltd.	8/28/2001	n/a
One Buena Vista, Ltd.	Buena Vista Sr. Community	Cleburne Buena Vista, Inc.	Blunn Developers, Ltd.	12/22/2006	n/a
Caney Run, Ltd.	Caney Run Estates	Lone Star Housing Corporation (Managing General Partner)	Blunn Developers, Ltd.	4/30/2004	n/a
Graugnard Place, Ltd.	Cantibury Pointe	Lone Star Housing Corporation (Managing General Partner)	Blunn Developers, Ltd.	6/4/2002	n/a
Western IB Hunt Groves, L.P.	Groves Apartments	Western IB Hunt, LLC	Blunn Developers, Ltd.	3/16/2006	n/a
Bayou Pointe, Ltd.	Logan's Pointe	Lone Star Housing Corporation (Managing General Partner)	Blunn Developers, Ltd.	6/10/2002	n/a
Merritt Place, Ltd.	Merritt Place Estates	Merritt Place, LLC	Blunn Developers, Ltd.	9/16/2003	n/a
Bellsroe Limited Partnership	North Grand Villas	Lone Star Housing Corporation (Managing General Partner)	Blunn Developers, Ltd.	6/6/2003	n/a
LIHTC Camp Verde, L.P.	Parkway Apartments	Camp Verde LIHTC I, LLC	Camp Verde Development, LLC (IBI entity)	7/10/2002	n/a
Riverside Meadows, Ltd.	Riverside Meadows Apartments	Riverside Meadows I, LLC	Blunn Developers, Ltd.	12/13/2001	Cimarron Mortgage Limited Partnership (sub debt)
Skyway Villas, Ltd.	Skyway Villas Apartments	LT Housing, LLC	Blunn Developers, Ltd.	7/1/2001	n/a
Western Steeplechase, L.P.	Steeple Chase Apartments	Steeplechase Management, LLC	Steeplechase Development, LLC (IBI entity)	5/1/2002	n/a
San Jose, Ltd.	Tigua Village Apartments	Cortez Housing, LLC	Hunt Building Corporation and Investment Builders, Inc.	12/20/2002	n/a
Westgate Courtyards, L.P.	Westgate Apartments	Wakeland Housing and Development Corporation (Managing General Partner) and Santa Maria Land Company, LLC (Co-General Partner)	Hunt Development Corporation	7/1/2001	n/a

Schedule 2: Project Partnerships with Asset Management Responsibilities Transferring to Hunt/Ledic Jun 1st, 2016

Partnership:	Property Name:	HCI GP:	HCI Developer:	Project Partnership Agreement:	HCI Lender:
San Marcos AH-104, Ltd.	Champion's Crossing	Plum Creek Affordable Housing I, Inc.	Blunn Developers, Ltd.	5/23/2000	Cimarron Mortgage Limited Partnership (sub debt)
One Forest Park, Ltd.	Forest Park Apartments	Bryan Forest Park, LLC (Managing General Partner) and Services for Residents, LLC (Co-General Partner)	Blunn Developers, Ltd.	4/1/2004	n/a
Belvidere Hunt, Ltd.	Franklin Place Townhomes	Western Belvidere Hunt, LLC	Hunt Building Corporation and Investment Builders, Inc.	12/26/2000	n/a
Western Mesa Hills	Mesa Place Townhomes	Mesa Housing, LLC	Hunt Building Corporation and Investment Builders, Inc.	9/1/2000	n/a
South Creek Housing, Ltd.	Red Hills Villas	WCS Housing, LLC	Blunn Developers, Ltd.	12/13/2000	Cimarron Mortgage Limited Partnership (sub debt)
PAB Shady Oaks, Ltd.	Shady Oaks Manor Apartments	PAB Shady Oaks Housing, LLC	Blunn Developers, Ltd.	8/1/2002	Hunt Building Corporation, Ltd.
Western Sun Valley, L.P.	Village at Sun Valley Apartments	Western S.V., LLC	Blunn Developers, Ltd.	5/1/2000	n/a

SCHEDULE 3
LURA POLICIES
See attached.

SCHEDULE 4
SPONSOR OR PARTNER EVALUATION POLICY
See attached

GP PORTFOLIO: MONITORING THIRD PARTY MANAGEMENT COMPANIES ADMINISTRATION OF LURA-SPECIFIED SOCIAL SERVICES	Policy ID	Section 4.6
	Effective Date	4/1/2016
	Revision Date	n/a
	Revision Number	n/a

Revision Num

Revision History:

Policy Objective/Purpose:

The objective of this policy is to document the process of monitoring certain compliance activities of the properties for which Alden is the property partnership’s general partner (or asset manager of the general partner). The compliance activities being monitored are the third party Management Company’s administration of social services as required in the LURA. Alden’s monitoring of the Management Company’s social service administration will ensure that Alden (or its GP clients pursuant to asset management contracts) fulfills its program compliance responsibilities as owners of tax credit properties.

Responsible Party & Policy Procedure:

1. The abstract of LURA-required social services will be prepared and maintained by **Alden’s Assistant Vice President of Compliance** and compared against the services being provided at the property.
2. All **required documents and property information for the services provided and Service Providers** will be provided by the **Management Company** to the **Alden Compliance Team** which can include, but is not limited to:
 - a. Property Name and location
 - b. Scope and frequency of social **Services Provider**
 - c. Extended Use Agreement or LURA
 - d. Contact information for individual responsible for the coordination of the social services at the **Management Company**
 - e. Credentials of the **Services Provider** or evidence of the approval of the **Services Provider** by the **State Agency**.
3. The **Management Company** will provide the **Alden Compliance Team** with notification of any changes to the services provided or the **Services Provider**.
4. Annually, in conjunction with the property audit review, the **Alden Compliance Team** will request evidence of continued provision of services and continued state agency good standing

status of **Services Providers**.

5. In the event that the **Services Providers** are no longer in good standing with the state agencies or the services being provided differ from those described in the LURA, then the **Alden Compliance Team** will seek recommendations from the **State Agencies** for replacement **Services Providers** and will coordinate with its **Management Company** to institute the changes. If the replacement of the **Services Provider** exceeds 60 days, the **Assistant Vice President of Compliance** will notify the **State Agency** of the time frame within which the change will take place.
6. The **Alden Compliance Team** will track all services requirements of the LURA and its review of the services provided and **Services Provider** good standing in the **GP Portfolio Support Services Compliance Audit** form.
7. The **Alden Compliance Team** is responsible for ensuring that all of its contract Management Companies adhere to the requirements to contract supportive services as required in the LURA and to track such compliance in the FRAME system.

LP PORTFOLIO: UNDERWRITING: SPONSOR AND PROPERTY PARTNERSHIP PARTICIPATION EVALUATION: TAX CREDIT COMPLIANCE CAPABILITIES	Policy ID	Section 1.1
	Effective Date	4/1/2016
	Revision Date	n/a
	Revision Number	n/a

Revision History:

Policy Objective/Purpose:

The objective of this policy is to document the process of underwriting property partnership **Sponsors**, including non-profit 501(c)(3) entities, and for-profit Historically Underutilized Business (HUB) entities, in Alden’s sponsored LIHTC equity investments. Specifically, Alden’s underwriting of all property partnership participants (including development partners, guarantors, and any partners with ongoing partnership management responsibilities) will evaluate the experience and capacity of **Sponsors** to effectively deliver ongoing regulatory compliance with the Section 42 Program and other Federal, State and Local regulatory restriction(s) that may apply.

Responsible Party & Policy Procedure:

1. All **required due diligence documents and entity information for the proposed development** will be provided by the **Project Sponsor** to the **Underwriter** assigned to the transaction which can include, but is not limited to all items listed on the **Due Diligence Document Checklist – Project Participants**; and which will include a recent **Schedule of Contingent Liabilities (CL Schedule)** and **Schedule of Real Estate Owned (SREO)** for each **Guarantor**, which generally includes the Project Sponsor/Developer.
2. The **Underwriter**, overseen by the **Chief Credit Officer**, will review all sponsor related documents and prepare a narrative in which several key components of sponsor evaluation are addressed, including: (i) LIHTC development and ownership experience; (ii) experience in working with development partners, including general contractor and property management agent; (iii) performance data of LIHTC development (under construction and stabilized); (iv) local knowledge and expertise pertaining to the primary market area (PMA); (v) current financial resources (outside of the proposed transaction); (vi) experience with any State Housing Agencies and/or HUD , (vii) key individual background and credit checks, including litigation searches; (viii) and overall capacity of all project sponsors to perform under the proposed transaction during all phases (construction, lease-up, stabilized operations).
3. The **Property Management Agent**’ s experience and corporate resources associated with the proposed development type and area, as well as their experience in delivering operating results and compliance with the Section 42 Program, will be evaluated by the **Underwriter** in connection with the Sponsor review. Certain newly formed or less experienced Property Management Agents (PMAs) will be specifically evaluated for their tax credit compliance

capabilities, whereby the Underwriter will engage Alden's Compliance Group to perform a compliance audit of the PMA, interviews with compliance staff, review of affordable housing software, and interviews with State Agencies that have interacted with the PMA.

4. The **General Contractor** experience (with the proposed improvements and with the Sponsor) is discussed by the **Underwriter**. Alden's requirements as to GC contract terms and design, budget and peer evaluation are performed by **Alden's Construction and Engineering Group** and further reported to the **Underwriter** to inform the discussion related to the **General Contractor**, proposed improvements, and adherence to all laws and regulations governing the project. The proposed improvements will be compared to the tax credit award to ensure improvements comply with the award.
5. Each **Guarantor** will be required to provide a recent SREO and CL Schedule together with current Balance Sheet, which will be evaluated by the Alden Underwriter. Current liquidity and net worth is identified and discussed in light of any incipient liquidity risks (recourse obligations with near term due dates or performance targets), outstanding guarantees, and nature of income sources (such as development fees and partnership distributions from cash flow). Any reliance upon the external (or non-transactional) resources for the Sponsor/Guarantor to perform under the proposed guaranteed obligations (such as at Rental Achievement to achieve a minimum DSCR on the permanent debt) will be discussed with mitigating factors. (For example, if at Rental Achievement, the capitalized developer fee held back is less than the amount needed to pay down the permanent debt as estimated by the Underwriter under Alden's proprietary Stress Scenario, the resultant underwriting credit gap/exposure must be discussed in light of the potential reliance upon the Guarantor to source *external* liquidity to perform under the Rental Achievement Guaranty.)
6. As a final step to the evaluation, the **Underwriter** will grade the Sponsor/Guarantor (among other grading components, including Project and Location) in accordance with Alden's proprietary credit grading scale.
7. The **Underwriter** will provide a draft of the Sponsor narrative to the **Chief Credit Officer** for review. Once finalized, the **Underwriter** will incorporate the Sponsor narrative within the Investment Committee Memo that is attached to the larger Investment Committee Package (ICP) for formal review and unanimous approval of the proposed LIHTC investment by the **Investment Committee**. Once approved, any conditions or changes to the ICP are communicated to **Acquisitions** as pre-closing conditions. Minutes of the Investment Committee are recorded by the **Underwriter**, and are attached to the ICP in the permanent Project File.

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit application for Stallion Pointe Apartments, sponsored by Fort Worth Affordability, Inc. was submitted to the Department on January 15, 2016;

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued on January 19, 2016, and will expire on December 31, 2018;

WHEREAS, the proposed issuer of the bonds is the Trinity River Public Finance Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain characteristics of a proposed development site;

WHEREAS, the applicant did not disclose that the elementary school for the attendance zone of the proposed development did not achieve the Met Standard rating based on the 2015 Accountability Ratings by the Texas Education Agency (“TEA”);

WHEREAS, staff has performed a further review of the proposed development site and recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

WHEREAS, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of the Determination Notice with the condition that closing occur within 120 days (on or before August 26, 2016); and

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Portfolio Category 3 and deemed acceptable by EARAC after review and discussion;

NOW, therefore, it is hereby

FURTHER RESOLVED, that the issuance of a Determination Notice of \$1,306,854 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for Stallion Pointe Apartments is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before August 26, 2016, the Board authorizes EARAC to approve or deny an extension of the Determination Notice date subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: Stallion Pointe Apartments, proposed to be located at 9075 South Race Street in Fort Worth, Tarrant County, involves the new construction of 264 units of which 239 will be rent and income restricted at 60% of Area Median Family Income. The remaining 25 units will be market rate with no rent and income restrictions. The development will serve the general population and is zoned appropriately. The census tract (1060.04) has a median household income of \$39,812, is in the fourth quartile, and has a poverty rate of 31%.

Conditions to Award: It was recommended by EARAC that Board approval of the Determination Notice include a condition related to the closing of the bonds. Specifically, EARAC recommends that the closing must occur on or before 120 days (August 26, 2016) and that if closing has not occurred by such date, the Board authorizes EARAC to approve or deny an extension of the Determination Notice date subject to an updated previous participation review, if necessary. This condition is generally consistent with the requirements of a bond transaction utilizing non-traditional carryforward. For non-traditional carryforward reservations, a statutory 150-day deadline from the date of the reservation is imposed and the Determination Notice for any associated 4% award expires if closing does not occur within this timeframe or if the financing structure or terms change.

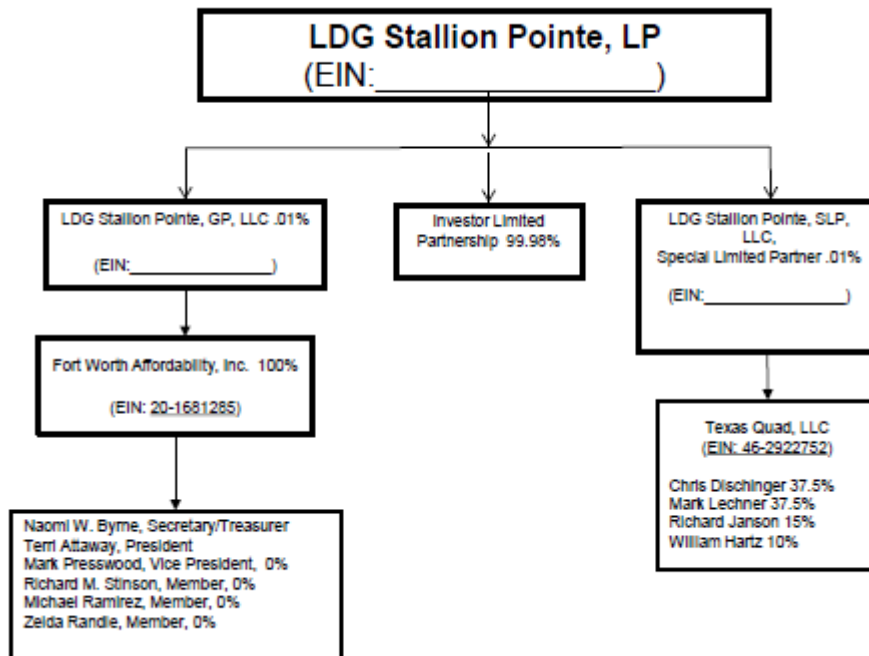
Site Analysis: This application was originally scheduled for the Board meeting of March 31, 2016, when staff realized the elementary school for the attendance zone of the proposed development did not achieve the Met Standard rating, according to the 2015 TEA Accountability Ratings. Stallion Pointe is proposed to be located within the Everman Independent School District and John and Polly Townley Elementary (“Townley”) failed to achieve the 2015 Met Standard rating. From a historical perspective, Townley was Improvement Required in 2013 (missed Met Standard by four points on Index 3); Met Standard in 2014 (exceeded target score on all four Performance Indices and earned one distinction); and was Improvement Required in 2015 (missed Met Standard by five points on Index 3). A Campus Improvement Plan (“CIP”) is in place and an update as of the last formative review (March, 2016), indicated the attendance rate at Townley (96%) slightly exceeds the state average (95%), but also indicated the average class size for 3rd and 4th Grade exceeds the district and state average. The CIP reflected there was considerable progress made of STAAR benchmarks for writing and math and progress that reflects 80% of students are reading at grade level. Moreover, as part of their objective to build strong relationships with parents and maintain open lines of communication, they’ve offered Open House events at apartment complexes in the area and they’ve had a 20% increase in parent involvement as a result. Strengths relative to staff quality revealed that Townley has a good mix of new and experienced teachers, with one-third of the teachers having 10+ years of experience and teacher salaries that are higher than the state average.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristics on the basis that there is a factual determination that such characteristic is not of such a nature or severity that it should render the development site ineligible based on acceptable mitigation efforts identified in the rule. After reviewing the aforementioned facts relating to the school standards and the Campus Improvement Plan for Townley, staff believes it leads to a

supported conclusion that the development site should not be considered ineligible under §10.101(a)(4) of the Uniform Multifamily Rules.

Organizational Structure: The Borrower is LDG Stallion Pointe, L.P., and includes the entities and principals as indicated in the organization chart below. The EARAC met on April 18, 2016, and considered the previous participation review documentation as it relates to the subject application. In accordance with 10 TAC §1.301(d)(1), the compliance history is designated as an Extra Large Portfolio Category 3 and deemed acceptable by the EARAC after review and discussion.

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



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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
APRIL 28, 2016

Presentation, Discussion, and Possible Action Regarding the Issuance of Multifamily Housing Revenue Bonds (Garden City Apartments) Series 2016 Resolution No. 16-014 and Determination Notice of Housing Tax Credits

RECOMMENDED ACTION

WHEREAS, the Board adopted the inducement resolution for Garden City Apartments at the November 12, 2015, Board meeting;

WHEREAS, a Certificate of Reservation was issued on January 7, 2016, with a bond delivery deadline of June 5, 2016;

WHEREAS, pursuant to 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose in the application the presence of certain undesirable characteristics of a proposed development site;

WHEREAS, the applicant disclosed the presence of such characteristics; specifically, that the proposed site is located in a census tract or within 1,000 feet of any census tract in an urban area where the Part I violent crime rate exceeds 18 per 1,000 persons annually according to NeighborhoodScout; one of the schools located in the attendance zone of the proposed development did not achieve a 2015 Met Standard rating by the Texas Education Agency (“TEA”); and the Environmental Site Assessment (“ESA”) indicated a facility listing within the American Society for Testing and Materials (“ASTM”) Standard search distances from the boundaries of the development site;

WHEREAS, staff has conducted a further review of the proposed development site and surrounding neighborhood and recommends the proposed site be found eligible under 10 TAC §10.101(a)(4) of the Uniform Multifamily Rules;

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Medium Portfolio Category 3 and deemed acceptable by the Executive Award and Review Advisory Committee (“EARAC”) after review and discussion; and

WHEREAS, EARAC recommends the issuance of Multifamily Housing Revenue Bonds (Garden City Apartments) Series 2016 and the issuance of a Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of \$16,740,000 in tax-exempt Multifamily Housing Revenue Bonds (Garden City Apartments) Series 2016, Resolution No. 16-014 is hereby approved in the form presented to this meeting,

FURTHER RESOLVED, the issuance of a Determination Notice of \$990,944 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Garden City Apartments; and

FURTHER RESOLVED, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: The Bonds will be issued in accordance with Texas Government Code, §1372 and under Texas Government Code, §2306, 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 solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.)*

The Garden City Apartments consists of the acquisition and rehabilitation of 252 existing units serving the general population in north Houston, Harris County, which does not have a zoning ordinance. The development is located inside Beltway 8, just south of State Highway 249 with IH-45 a few miles to the east, at the corner of Garden City Drive and West Gulfbank Road. The development is bordered by a retention basin, West Gulfbank Road and vacant land to the north, vacant land to the west, single family residences to the south and some retail and commercial development to the east.

The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income ("AMFI") that must be served; however, all of the units will be rent and income restricted at 60% AMFI. The development currently has a U.S. Department of Housing and Urban Development ("HUD") Section 8 project-based contract covering all of the units that was recently renewed for a 7-year term; the contract will be transferred to the new owner and renewed for a 20-year term at closing.

Site Analysis: The applicant disclosed the presence of undesirable neighborhood characteristics under §10.101(a)(4)(B) of the Uniform Multifamily Rules, which requires additional site analysis; specifically, the rate of Part I violent crimes is greater than 18 per 1,000 persons annually, one of the schools in the attendance zone for this development did not achieve the Met Standard rating by TEA and the ESA indicated a facility listing within the ASTM Standard search distances from the boundaries of the development site. Staff conducted a Development Site and Neighborhood Review, which included a site visit, on February 15, 2016.

Crime: With respect to the rate of Part I violent crimes, while the proposed site is not located within a census tract (5331.00) that exceeds the threshold, it is located within 1,000 feet of another census tract (5330.00) where the rate of such crimes is 25.27 per 1,000 persons annually, according to Neighborhoodscout.com. When comparing the census demographics among these two census tracts, the population of the proposed site is approximately 6,500 persons while the population of the adjacent tract in question is nearly three times as less, with approximately 2,200 persons. Census tract (5330.00) is predominately vacant and includes a middle school, some single family homes and a cemetery. According to Neighborhoodscout.com this census tract (5330.00) actually has the lowest total instances of violent crimes

compared to the subject tract. Considering the differences in population density and total instances of violent crimes, it is possible that the results from Neighborhoodscout artificially skew the crime rate such that it may not accurately represent the level of criminal activity in the area.

The applicant provided violent crime data from information available from the City of Houston's Police Department, based on the police beat of the adjacent census tract, consistent with acceptable mitigation allowed under §10.101(a)(4)(D) of the Uniform Multifamily Rules. It should be noted that the police beat for the adjacent census tract is the same police beat that serves the census tract containing the development. The data indicated that the average violent crime per 1,000 persons was 9.94, well below the threshold in the rule of 18 per 1,000 persons. Moreover, the applicant provided a Safety and Security Plan that identified security improvements planned as part of the rehabilitation for Garden City. Some of these improvements include the following: install new security cameras and equipment (video surveillance system), access control, burglar alarm and video intercom for the community center, provide and install new LED light fixtures at building exteriors and new community building as well as new pole lights, new fencing to further secure the perimeter of the property, and key fob access for residents only at the community building and laundry facility. Also explained, was that currently the local police occupy space at the property in a vacant unit above the management office; however, this space needs to be renovated and centrally located. The renovation of the community building in the middle of the property includes a brand new office substation for the police that will be larger and allow police officers to spend time and congregate between shifts, and will help detract criminal activity and behavior. Lastly, this development is unique in that there is a public street that runs through the center of the property. The applicant has expressed an interest in acquiring Garden City Drive on the basis that closing off the street would reduce the number of people that can access the property and; therefore, reduce the potential for criminal activity. This strategy has been implemented by the applicant at other developments across the country and, according to the applicant, it has been successful.

Schools: The proposed development is located within the Aldine Independent School District and Bethune Academy, a 3rd and 4th grade school for the proposed development's attendance zone, did not achieve the Met Standard rating according to the 2015 Accountability Ratings by TEA. This school was cited for Improvement Required in 2013, achieved Met Standard in 2014 (and met the target score on all four Performance Indices), and was back to Improvement Required for 2015 (achieved the target score on two of the four Performance Indices). According to the School Improvement Plan ("SIP") adopted on October 20, 2015, the average daily attendance rate over the past three years has been in the 97th percentile which meets the district expectation. While there are currently no vacant positions, the SIP further indicated there was a high turnover rate last year due to three retirements, five promotions, one transfer and three teachers resigning from the district. The SIP recognized the need to retain and build capacity of new teachers. Bethune Academy is the only school in this attendance zone that failed to achieve the Met Standard rating, and did so because it missed the target score on Index 4 related to Postsecondary Readiness by one point.

Environmental: The applicant also disclosed that the ESA noted a facility that is on the Facility Index System ("FINDS") report. This report is a computerized inventory of all facilities that are regulated or tracked by the U.S. Environmental Protection Agency. The rule requires disclosure if there are any facility listings within the ASTM-required search distances from the boundaries of the proposed development. According to the ESA provider, the appearance of a site in this database does not, in itself, indicate an environmental concern, but is used more as an indication of the types of operations occurring at these facilities. The facility in question is a water production/treatment facility and is located on the east adjacent property. It does not have a unique address and therefore the address for the proposed development is used for this listing. The water production/treatment facility is tracked through the Texas Commission on

Environmental Quality's Central Registry, with the listing identified as Champs Water Company and associated with the facility's registration as a public water system. The recommendation of the ESA provider is that based on the nature of the listing, the inclusion on the FINDS database should not be considered a recognized environmental concern to the proposed development.

Under §10.101(a)(4) of the Uniform Multifamily Rules, there is a consideration for acceptable mitigation regarding the undesirable neighborhood characteristics on the basis that the development includes the preservation of existing occupied affordable housing units that are subject to existing federal rent or income restrictions. Currently, 100% of the units at Garden City Apartments are covered by a Section 8 HAP contract. After reviewing all of the aforementioned facts relative to the components of crime, school standards and ESA issues disclosed, staff recommends the proposed development site be considered eligible. It is also worth noting that the scope of work planned for this development involves approximately \$31,000/unit in rehabilitation costs, which exceeds the minimum threshold in the rule of \$25,000/unit.

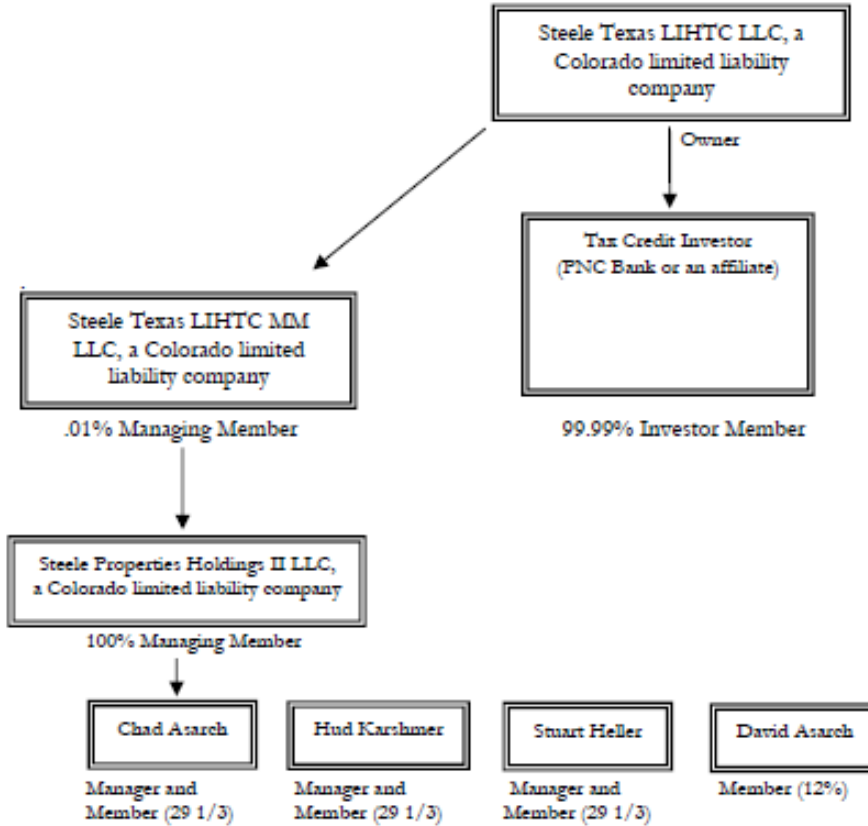
Organizational Structure and Previous Participation: The borrower is Steele Texas LIHTC LLC and includes the entities and principals as further illustrated in Exhibit A. The applicant is considered a Medium Portfolio Category 3 and the previous participation review was deemed acceptable by EARAC after further review and discussion with two members opposing.

Public Hearing/Public Comment: A public hearing for the development was conducted by staff on March 15, 2016, and there was no one in attendance at the hearing. A copy of the hearing transcript is included herein. The Department received a letter from (at the time) State Representative Sylvester Turner and a letter of support from City Councilman Jerry Davis has also been received. No letters of opposition have been received.

Summary of Financial Structure

The financing structure of Garden City Apartments is one that the Department has not utilized in any of its previous issuances; however, it is a structure that many local issuers in the state and across the country have used. Under the proposed plan, the Department will issue an unrated tax-exempt fixed rate governmental note (similar to fixed rate bond in other structures) in the amount of \$16,740,000 that initially will be purchased by PNC Bank under Freddie Mac's Delegated Underwriting for Targeted Affordable Housing program. Freddie Mac will acquire the loan and the Department's related governmental note within approximately 30 days of closing and it is expected to be securitized with other loans shortly thereafter. PNC Bank will remain as the servicer of the loan for Freddie Mac, as the permanent lender and bondholder. The governmental note will have an interest rate of 4.10% with a 17-year term, 35-year amortization and maturity date of June 1, 2033.

Exhibit A



RESOLUTION NO. 16-014

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY NOTE (GARDEN CITY APARTMENTS); 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 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, PNC Bank, National Association (the "Initial Funding Lender") will by its purchase of the Texas Department of Housing and Community Affairs Multifamily Note (the "Governmental Note") make a loan in the aggregate principal amount of \$16,740,000 to the Department for the purpose of obtaining funds to finance the Development (defined below) (the "Funding Loan") and the Board has determined to authorize the issuance of its Governmental Note to the Initial Funding Lender in an original principal amount equal to the original principal amount of the Funding Loan, in evidence thereof, pursuant to and in accordance with the terms of a Funding Loan Agreement (the "Funding Loan Agreement") among the Department, BOKF, NA, as fiscal agent (the "Fiscal Agent"), and the Initial Funding Lender, all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Funding Loan, which for purposes of the Act constitute proceeds of the Governmental Note, to fund a mortgage loan to Steele Texas LIHTC LLC, a Colorado limited liability company (the "Borrower") in order to finance the cost of acquisition, rehabilitation and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within the State and required by the Act to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on November 12, 2015, 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, the Borrower and the Fiscal Agent will execute and deliver a Project Loan Agreement (the "Project Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Funding Loan, which for purposes of the Act constitute proceeds of the Governmental Note (the "Project Loan") to the Borrower to enable the Borrower to finance the cost of acquisition, rehabilitation and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a multifamily note (the "Project Note") in an original principal amount equal to the original aggregate principal amount of the Governmental Note, and providing for payment of interest on such principal amount equal to the interest on the Governmental Note and to pay other costs described in the Project Loan Agreement; and

WHEREAS, it is anticipated that the Project Note will be secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the "Security Instrument") from the Borrower for the benefit of the Department and assigned to the Fiscal Agent; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Project Loan Agreement, the Project Note and the Security Instrument will be assigned to the Fiscal Agent pursuant to an Assignment of Security Instrument (the "Assignment") from the Department to the Fiscal Agent; and

WHEREAS, the Board has determined that the Department, the Fiscal Agent, 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 Harris County, Texas; and

WHEREAS, following the making of the Funding Loan by the Initial Funding Lender and the issuance of the Governmental Note by the Department and delivery thereof to the Initial Funding Lender, the Federal Home Loan Mortgage Corporation (the "Purchaser") will purchase the Governmental Note from the Initial Funding Lending; and

WHEREAS, the Board has examined proposed forms of (a) the Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement, and the Assignment (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Security Instrument and the Project 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 Governmental Note, the execution and delivery of the Issuer Documents, the acceptance of the Security Instrument and the Project 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 GOVERNMENTAL NOTE; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Governmental Note. That the issuance of the Governmental Note is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Funding Loan Agreement, and that, upon execution and delivery of the Funding Loan Agreement, 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 Governmental Note and to deliver the Governmental Note to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Fiscal Agent for authentication (to the extent required in the Funding Loan Agreement), and thereafter to deliver the Governmental Note to or upon the order of the Initial Funding Lender.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That (i) the Governmental Note shall bear interest at the rate of 4.10% per annum (subject to adjustment as provided in the Funding Loan Agreement); provided that, in no event shall the interest rate (including any default rate) on the Governmental Note exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Governmental Note shall be \$16,740,000; (iii) the Governmental Note shall mature on June 1, 2033; and (iv) the original principal amount of the Funding Loan, and for purposes of the Act, the price at which the Governmental Note is sold to the Initial Funding Lender, shall be \$16,740,000.

Section 1.3 Approval, Execution and Delivery of the Funding Loan Agreement. That the form and substance of the Funding Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Funding Loan Agreement, and to deliver the Funding Loan Agreement to the Fiscal Agent and the Initial Funding Lender.

Section 1.4 Approval, Execution and Delivery of the Project Loan Agreement. That the form and substance of the Project Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Project Loan Agreement, and to deliver the Project Loan Agreement to the Borrower and the Fiscal Agent.

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 Fiscal Agent and to cause the Regulatory Agreement to be filed of record in the real property records of Harris County, Texas.

Section 1.6 Issuance of the Governmental Note. That the issuance of the Governmental Note and delivery thereof to the Initial Funding Lender, and the subsequent sale of the Governmental Note by the Initial Funding Lender to the Purchaser is hereby authorized and approved.

Section 1.7 Acceptance of the Project Note and the Security Instrument. That the form and substance of the Project Note and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Project Note to the order of the Fiscal Agent without recourse.

Section 1.8 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Fiscal Agent.

Section 1.9 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 1.10 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

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

- Exhibit B - Funding Loan Agreement
- Exhibit C - Project Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Project Note
- Exhibit F - Security Instrument
- Exhibit G - Assignment

Section 1.12 Authorized Representatives. That the following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Deputy Executive Director of Asset Analysis and Management 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 Governmental Note 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 Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance and delivery of the Governmental Note.

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 Governmental Note and all other Department activities.

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Funding Loan, which for purposes of the Act constitute proceeds of the Governmental Note and the fees and revenues to be received in connection with the financing of the Development in accordance with the Funding Loan Agreement and to enter into any agreements relating thereto only to the extent permitted by the Funding Loan Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Governmental Note 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 Project 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 Project 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 Governmental Note 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 Project Loan established pursuant to the Project 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 Governmental Note and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Governmental Note.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Governmental Note in the secondary open market for municipal securities.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Governmental Note and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Funding Loan Agreement, including the revenues and funds of the Department pledged under the Funding Loan Agreement to secure payment of the Governmental Note, and under no circumstances shall the Governmental Note be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Governmental Note 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. The Governmental Note shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

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

[Execution page follows]

PASSED AND APPROVED this 28th day of April, 2016.

[SEAL]

J. Paul Oxer, Chair

ATTEST:

Secretary

EXHIBIT A

Description of Development

Borrower: Steele Texas LIHTC LLC, a Colorado limited liability company

Development: The Development is a 252-unit affordable multifamily community known as Garden City Apartments, located at 9601 W. Montgomery Road, Houston, Harris County, Texas 77088. It consists of 28 2-story residential buildings with approximately 193,052 net rentable square feet. The unit mix consists of:

16	one-bedroom/one-bath units
88	two-bedroom/one-bath units
104	three-bedroom/one-bath units
40	four-bedroom/one-bath units
4	five-bedroom/one-bath units
<hr/>	
252	Total Units

Unit sizes range from approximately 486 square feet to approximately 1,121 square feet.



6915 ANTOINE, SUITE E
HOUSTON, TEXAS 77091
713-683-6363

P.O. BOX 2910
AUSTIN, TEXAS 78768-2910
512-463-0554

State of Texas
House of Representatives
SYLVESTER TURNER
STATE REPRESENTATIVE

December 4, 2015

Mr. Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78711

Dear Mr. Irvine,

I am very appreciative for your staff who have kept me up to date regarding the possible sale of the Garden City Apartments, a Section 8 multifamily community, located at 9601 W. Montgomery, Houston, Texas, 77088, in my legislative district.

For the past few years I have received a variety of suggestions in how to reduce the criminal activity within the area surrounding the Garden City Apartments. A suggestion was made to create the Garden City Apartments as a gated community, thereby ensuring that only residents of the apartment complex have access to and from the complex. Please note there is a City of Houston street that runs directly through the complex which would require a legal challenge that would have to be resolved in coordination with the City of Houston and the new owner, if a gated community were pursued.

I realize that the sale of this property is still in process, however, I would like to ensure that this letter be held in the record and presented to the new owner, at the appropriate time. I would like to ensure that the new owner understands that any actions they initiate to create Garden City as a gated complex would be extremely beneficial and would vastly improve the security for the complex and surrounding community.

I would like to thank you for your time and consideration in reviewing my letter.

Sincerely,

A handwritten signature in black ink that reads "Sylvester Turner".

Sylvester Turner
State Representative
District 139 - Houston, Texas



JERRY DAVIS
City Council Member
District B

April 7, 2016

Mr. Jerry Davis
Council Member – District B
City Hall Annex
900 Bagby, First Floor
Houston, TX 77002

Re: Garden City Apartments: (252 Units) 4% Federal Low Income Tax Credits
9601 W. Montgomery Rd.
Houston, TX 77088

Dear TDHCA –

As Council Member for District B in the City of Houston, I am pleased that Steele Properties, LLC (Steele) is pursuing the rehabilitation of Garden City Apartments. The rehabilitation is an apartment community comprised of approximately 252 units of which 252 will be for low income housing tenants. The population served will continue to be general families. The project provides our local citizens with a safe and comfortable rental environment to raise families, reside, and retire. I would like to express my full support of your application to the agency outlined below for tax credits to support the development.

I am glad to know that the transaction will result in over \$8.0 Million in rehabilitation – a needed investment that will revitalize this community. This renovation will include significant interior and exterior improvements as well as important ADA accessibility compliance standards and critical security features and upgrades.

I understand that Steele Properties, LLC will leverage different resources to make this needed preservation and rehabilitation possible, including:

- An application to the Texas Department of Housing & Community Affairs (TDHCA) for an allocation of Federal Low Housing Income Housing Tax Credits

Again, I am very supportive of your application and associated development plans. Please keep me apprised of your development progress.

Sincerely,

A handwritten signature in blue ink that reads "Jerry V. Davis".

Jerry V. Davis
Vice Mayor Pro-Tem
Council Member, District B

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING
ON
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS
RELATING TO
GARDEN CITY APARTMENTS

Shepard-Acres Homes Neighborhood Library
8501 West Montgomery Road
Houston, Texas

Tuesday,
March 15, 2016
6:10 p.m.

BEFORE: SHANNON ROTH, TDHCA Housing Specialist

ON THE RECORD REPORTING
(512) 450-0342

P R O C E E D I N G S

1
2 Good evening. My name is Shannon Roth. I
3 would like to proceed with the public hearing. Let the
4 record show that it is 6:10 p.m., Tuesday, March 15, 2016.

5 We are at the Shepard-Acres Homes Neighborhood Library
6 located at 8501 West Montgomery Road, Houston, 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 issue.

17 No decision regarding the development will be
18 made at this hearing. The Department's board is scheduled
19 to meet to consider this transaction on April 28, 2016.
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 April 19, 2016.

25 The bonds for the Garden City Apartments will

1 be issued as tax-exempt multifamily revenue bonds in the
2 aggregate principal amount not to exceed 17 million and
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, the Issuer.

6 The proceeds of the bonds will be loaned to the
7 Steele Texas LIHTC LLC, 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 252-unit multifamily residential
11 rental development to be constructed on approximately
12 12.317 acres of land located at 9601 West Montgomery Road,
13 Houston, Harris County, Texas. The proposed multifamily
14 rental housing community will be initially owned and
15 operated by the borrower or a related person or affiliate
16 thereof.

17 I would now like to open the floor for public
18 comment.

19 Let the record show there are no attendees, and
20 therefore, the meeting is now adjourned. The time is
21 6:12 p.m.

22 (Whereupon, at 6:12 p.m., the public hearing
23 was concluded.)

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C E R T I F I C A T E

IN RE: Garden City Apartments
LOCATION: Houston, Texas
DATE: March 15, 2016

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.

/s/ Laurel H. Stoddard 3/17/2016
(Transcriber) (Date)

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

8a

BOARD REPORT ITEM
HOUSING RESOURCE CENTER
APRIL 28, 2016

Report Regarding the Progress of *Youth Count Texas!*

BACKGROUND

House Bill (“HB”) 679, authored by Representative Sylvester Turner, was passed by the 84th Texas Legislature and signed into law on June 17, 2015. HB 679 added §§2306.1101 and 2306.1102 to the Texas Government Code. The former defines homeless youth, and the latter requires the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”), in conjunction with the Texas Interagency Council for the Homeless (“TICH”), to conduct a study of homeless youth. A report on the study is due to the Texas Legislature no later than December 1, 2016.

The TICH is a council created by the 74th Texas Legislature to coordinate the state’s homeless resources. Per legislation, the TICH serves as an advisory committee to the Department, and TDHCA also provides clerical support to the TICH. The TICH is currently composed of 11 state agency representatives and representatives appointed by the Governor, Lieutenant Governor, and Speaker of the House of Representatives. TDHCA has two representatives on the TICH. The TICH has created a workgroup specifically for the report on homeless youth. This workgroup has participated in Phase I, Survey Development, described below.

HB 679 requires a physical count of youth experiencing homelessness in Texas. Currently, the U.S. Department of Housing and Urban Development (“HUD”) requires a point-in-time (“PIT”) count, which is an annual count of persons experiencing homelessness. HUD’s PIT guide sets a standard that PIT counts be conducted within the last 10 days in January, and that the PIT count methodology must be in alignment with the local Continuum of Care (“CoC”) governance charter.

To satisfy the count of youth experiencing homelessness required by the legislation, TDHCA initiated *Youth Count Texas!* for a statewide count and needs assessment of Texas homeless and unstably-housed youth. The youth count is being considered to be held in conjunction with the PIT count and/or be a stand-alone youth count at another time of year. *Youth Count Texas!* started in October 2015 and is running through March 2016.

The study on homelessness among youth is being conducted in three phases:

Phase I – Survey Tool Development. This phase is complete. From July to August 2015, TDHCA contracted with the Texas Network of Youth Services (“TNOYS”) to gather input from stakeholders including the TICH, hold three roundtables on the survey tools, and obtain commitments from a majority of Continua of Care (“CoCs”) to take the survey tool to their governing bodies for approval. The result was the creation of two surveys: one used during the annual point-in-time (“PIT”) count of homeless persons in January 2016 and one for a needs assessment which was used through March 2016. An annual PIT count is required by HUD.

A report on Phase I with a presentation by TNOYS occurred at the December 2015 TDHCA board meeting.

Phase II – Survey Implementer. This phase began September 2015 and is scheduled through early May 2016. TDHCA contracted with TNOYS to create training for survey implementation, provide technical assistance for CoCs, provide a data collection methodology and system, and deliver a report of the results of the implementation. TNOYS developed partnerships for *Youth Count Texas!* with the Texas Homeless Network, Texas Homeless Education Office, a majority of the CoCs, and the University of Texas at Austin’s Child and Family Research Partnership. Teams of volunteers were organized by local organizations in each community; some communities had as many as 84 volunteers administering surveys to youth who were homeless or unstably housed. *Youth Count Texas!* took place in the following communities:

- (1) Arlington/Fort Worth;
- (2) Austin;
- (3) Bryan/College Station;
- (4) Corpus Christi;
- (5) Dallas;
- (6) Denton;
- (7) El Paso;
- (8) Houston;
- (9) New Braunfels/Comal County;
- (10) San Antonio;
- (11) Victoria; and
- (12) Waco/Temple.

Over 850 surveys were collected. The data is currently being compiled by The University of Texas at Austin’s Child and Family Research Partnership in preparation for analysis, which will occur in Phase III. In addition, TNOYS will be providing a report to TDHCA on the process of implementing *Youth Count Texas!*, incorporating feedback from count organizers, youth, and volunteers.

A presentation on Phase II by TNOYS will be delivered at the April 2016 TDHCA board meeting.

Phase III – Data Analysis. This phase is expected to start in late May 2016. The data from Phase II, along with data collected from other Texas state agencies, will be analyzed to examine the number and needs of homeless youth and the degree to which current programs are meeting those needs; identify any sources of funding that might be available to provide services to homeless youth; and develop a strategic plan establishing steps to be taken and timelines for reducing youth homelessness in this state.

It is expected that a third and final report item on the conclusion of Youth Count Texas! will occur at the December 2016 board meeting.

8b

ORAL
PRESENTATION